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FEDERAL REGISTER

Vol. 78 Tuesday,
No. 43 March 5, 2013

Pages 14155–14428

OFFICE OF THE FEDERAL REGISTER

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Printed on recycled paper.

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Federal Register

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2013–0154; Special Conditions No. 25–484–SC]

Special Conditions: Learjet Inc., Model LJ–200–1A10 Airplane; Use of Automatic Power Reserve (APR), an Automatic Takeoff Thrust Control System (ATTCS), for Go-Around Performance Credit

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Learjet Model LJ–200–1A10 airplane. This airplane will have novel or unusual design features associated with utilizing go-around performance credit when using an automatic takeoff thrust control system. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is February 13, 2013. We must receive your comments by April 19, 2013.

ADDRESSES: Send comments identified by docket number FAA–2013–0154 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov/* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 8 a.m. and 5 p.m., Monday through Friday, except federal holidays.
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Privacy: The FAA will post all comments it receives, without change, to *http://www.regulations.gov/,* including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov/.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Doug Bryant, FAA, Propulsion/Mechanical Systems, ANM–112, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–2384; facsimile 425–227–1320.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice of, and opportunity for prior public comment on, these special conditions are impracticable because these procedures would significantly delay issuance of the design approval and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive on or before the closing date for comments. We may change these special conditions based on the comments we receive.

Background

On February 9, 2009, Learjet Inc. applied for a type certificate for their new Model LJ–200–1A10 airplane (hereafter referred to as the ''Model LJ–200''). The Model LJ–200 is a business class aircraft powered by two high-bypass turbine engines with an estimated maximum takeoff weight of 35,550 pounds and an interior configuration for up to 10 passengers.

The Model LJ–200 includes an automatic takeoff thrust control system (ATTCS) described as an automatic power reserve (APR) system. Learjet has requested approval to use the APR as the performance level in showing compliance with the approach climb requirements of Title 14, Code of Federal Regulations (14 CFR) 25.121(d). Part 25 appendix I limits the application of performance credit for ATTCS to takeoff only. Since the airworthiness regulations do not contain appropriate safety standards for approach climb performance using ATTCS, special conditions are required to ensure a level of safety equivalent to that established in the regulations.

Type Certification Basis

Under the provisions of § 21.17, Learjet Inc. must show that the Model LJ–200 meets the applicable provisions of part 25, as amended by Amendments 25–1 through 25–127 thereto, and part 26, as amended by Amendment 26–1 through 26–2 thereto.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model LJ–200 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Model LJ–200 must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy under § 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.17(a)(2).

Novel or Unusual Design Features

The Model LJ–200 will incorporate the following novel or unusual design features: An automatic takeoff thrust control system (ATTCS) described as an automatic power reserve (APR) system that is available at all times without any additional action from the pilot. This applies during takeoff and go-around flight operations. The aircraft performance data is based on the availability of the uptrim power during takeoff and approach climb. This results in a novel or unusual design feature for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards. Therefore, special conditions are required that provide the level of safety equivalent to that established by the regulations.

Discussion

Learjet Inc. is proposing to use the APR function of the Model LJ–200 during go-around and is requesting approach climb performance credit for the use of the additional power provided by the APR uptrim. The Model LJ–200 powerplant control system comprises a full authority digital electronic control (FADEC) for the Pratt & Whitney Canada Model PW307B engine. The engine FADEC system includes the APR feature. The configuration provides for APR activation during go-around.

The APR system is available at all times without any additional action from the pilot. This applies during takeoff and go-around flight operations. The aircraft performance data is based on the availability of the uptrim power during takeoff and approach climb.

The part 25 standards for ATTCS, contained in § 25.904 and appendix I to part 25 specifically restrict performance credit for ATTCS to takeoff only. Expanding the scope of the standards to include other phases of flight, including go-around, was considered at the time the standards were issued. However, flightcrew workload issues in the event of an engine failure during a critical point in the approach, landing, or go-around operations precluded further consideration.

The ATTCS incorporated on the Model LJ–200 allows the pilot to use the same power setting procedure during a go-around regardless of whether or not an engine fails. Since the ATTCS is always armed, it will function automatically following an engine failure and advance the remaining engine to the APR power level. This satisfactorily addresses the flightcrew workload issues that were a concern when the ATTCS standards were originally promulgated.

Since the airworthiness regulations do not contain appropriate safety standards to allow approach climb performance credit for ATTCS, special conditions are required to ensure a level of safety equivalent to that established in the regulations. The definition of a critical time interval for the approach climb case, during which time it must be extremely improbable to violate a flight path based on the § 25.121(d) gradient requirement, is of primary importance. In the event of a simultaneous failure of an engine and the APR function, falling below the minimum flight path defined by the 2.5 degree approach, decision height, and climb gradient required by § 25.121(d) must be shown to be an extremely improbable event during this critical time interval. The § 25.121(d) gradient requirement implies a minimum one-engine-inoperative flight path capability with the airplane in the approach configuration. The engine may have been inoperative before initiating the go-around, or it may become inoperative during the go-around. The definition of the critical time interval must consider both possibilities.

For approval to use the power provided by the ATTCS to determine the approach climb performance limitations, the Model LJ–200 must comply with the requirements of § 25.904 and appendix I to part 25, including the following special conditions pertaining to the go-around phase of flight.

Applicability

As discussed above, these special conditions are applicable to the Model LJ–200–1A10. Should Learjet Inc. apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on one model of airplanes. It is not a rule of general applicability.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Learjet Model LJ–200–1A10 airplanes.

1. *General.* An automatic takeoff thrust control system (ATTCS) is defined as the entire automatic system, including all devices, both mechanical and electrical, that sense engine failure, transmit signals, actuate fuel controls or power levers, or increase engine power by other means on operating engines to achieve scheduled thrust or power increases and furnish flight deck information on system operation.

2. *ATTCS.* The engine power control system that automatically resets the power or thrust on the operating engine (following engine failure during the approach for landing) must comply with the following requirements stated in paragraphs 2a, 2b, and 2c:

a. Performance and System Reliability Requirements. The probability analysis must include consideration of ATTCS failure occurring after the time at which the flightcrew last verifies that the

ATTCS is in a condition to operate until the beginning of the critical time interval.

b. Thrust or Power Setting.

(1) The initial thrust or power setting on each engine at the beginning of the takeoff roll or go-around may not be less than any of the following:

(i) That required to permit normal operation of all safety-related systems and equipment dependent upon engine thrust or power lever position; or

(ii) That shown to be free of hazardous engine response characteristics and not to result in any unsafe aircraft operating or handling characteristics when thrust or power is increased from the initial takeoff or go-around thrust or power to the maximum approved takeoff thrust or power.

(2) For approval of an ATTCS system for go-around, the thrust or power setting procedure for the operating engine(s) must be the same for go-arounds initiated with all engines operating as for go-arounds initiated with one-engine-inoperative.

c. Powerplant Controls. In addition to the requirements of § 25.1141, no single failure or malfunction, or probable combination thereof, of the ATTCS, including associated systems, may cause the failure of any powerplant function necessary for safety. The ATTCS must be designed to:

(1) Apply thrust or power on the operating engine(s), following any one engine failure during takeoff or go-around, to achieve the maximum approved takeoff thrust or power without exceeding engine operating limits; and

(2) Provide a means to verify to the flightcrew before takeoff and before beginning an approach for landing that the ATTCS is in a condition to operate.

3. *Critical Time Interval.* (Refer to figure 1 and figure 2 below.) The definition of the critical time interval in part 25 appendix I25.2(b) shall be expanded to include the following:

a. When conducting an approach for landing using ATTCS, the critical time interval is defined as follows:

(1) The critical time interval begins at point A on a 2.5 degree approach glide path. (Point A is the point on that glide path from which, assuming a simultaneous engine and ATTCS failure, the resulting approach climb flight path intersects, at point B, a flight path originating at a later point on the same approach path corresponding to the part 25 one-engine-inoperative approach climb gradient.) The period of time, time interval AB, must be no shorter than the time in figure 2, I25.2(b) time interval FG. Figure 2 is reproduced from appendix I and includes a change that identifies the time interval FG.

(2) The critical time interval ends at point D on a minimum performance, all-engines-operating go-around flight path from which, assuming a simultaneous engine and ATTCS failure, the resulting minimum approach climb flight path intersects the flight path (point E) corresponding to the 14 CFR part 25 minimum one-engine-inoperative approach climb gradient represented in figure 1 as the engine failed, ATTCS operating flight path.

The all-engines-operating go-around flight path and the 14 CFR part 25 one-engine-inoperative approach climb gradient flight path (engine failed, ATTCS operating flight path in figure 1) originate from a common point, point C, on a 2.5 degree approach path. The period of time, time interval DE, from the point of simultaneous engine and ATTCS failure, point D, to the intersection of these flight paths, point E, must be no shorter than the corresponding time in figure 2, I25.2(b) interval FG.

b. The critical time interval must be determined at the altitude resulting in the longest critical time interval for which one-engine-inoperative approach climb performance data are presented in the airplane flight manual.

c. The critical time interval is illustrated in figure 1.

Figure 1. Go-around ATTCS

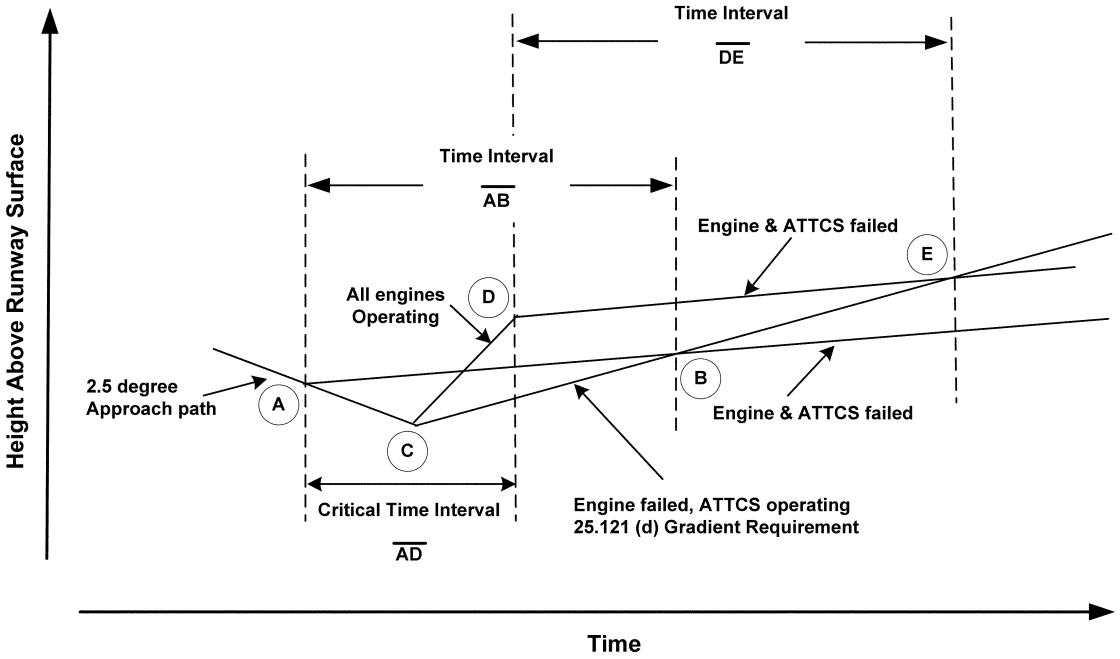
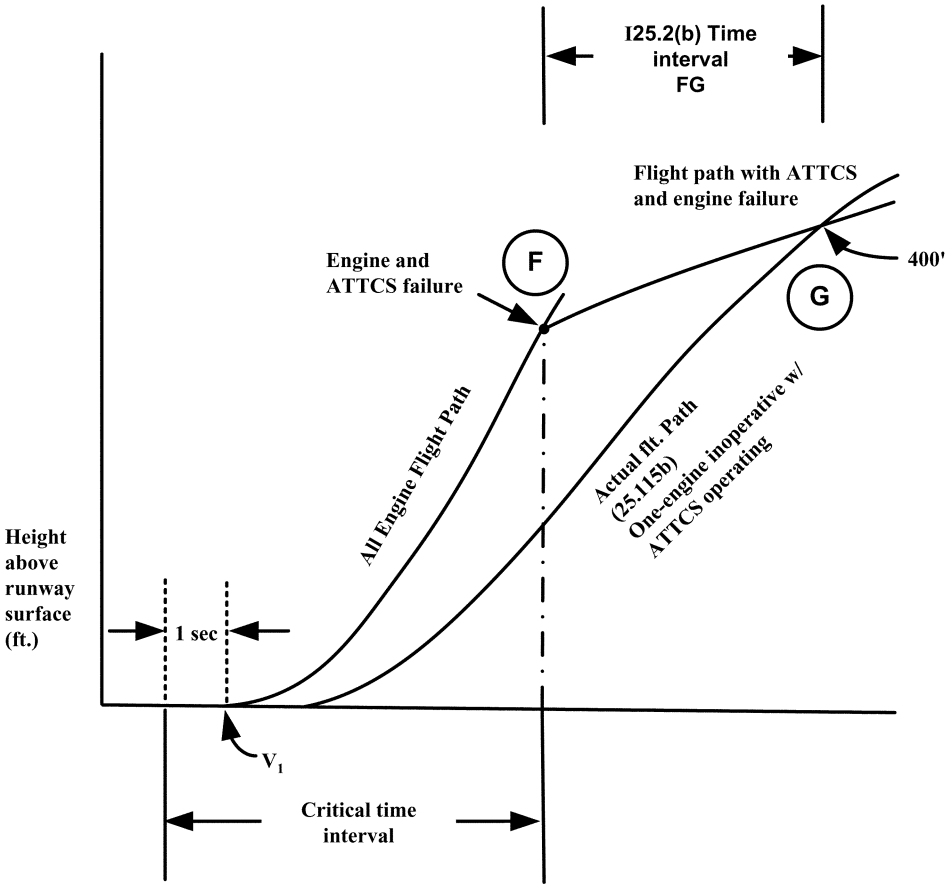


Figure 2. Appendix I25.2(b), "Critical Time Interval" Illustration (ATTCS takeoff)



Note: Figure 2 is included for reference and clarity to show time interval FG. It has not been included in previous special conditions on the same subject and does not include any new requirements. It does not change the meaning or intent of the special conditions.

Issued in Renton, Washington, on February 13, 2013.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–05006 Filed 3–4–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0861; Directorate Identifier 2012–NM–074–AD; Amendment 39–17364; AD 2013–04–07]

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–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes. This AD was prompted by reports of the loss of the fixed frequency system, leading to the loss of power to the left and right buses and all systems serviced by these buses. This AD requires modification of the wiring and changes to existing airworthiness limitations. We are issuing this AD to prevent loss of the fixed frequency system, which could lead to loss of a number of the pilot's and co-pilot's flight instruments, in addition to other avionics systems.

DATES: This AD becomes effective April 9, 2013.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of April 9, 2013.

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

FOR FURTHER INFORMATION CONTACT: Assata Dessaline, Aerospace Engineer, Avionics and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7301; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on August 28, 2012 (77 FR 51946). That NPRM proposed to correct an unsafe condition for the specified products. The Mandatory Continuing Airworthiness Information (MCAI) states:

> There have been several reported occurrences of the loss of the 400Hz [hertz] Fixed Frequency System, leading to the loss of power to the Left 115VAC [alternating current] bus, the Right 115VAC bus, the Left 26VAC bus, the Right 26VAC bus and all systems serviced by these four electrical buses. The loss of the 400Hz Fixed Frequency System has been attributed to a failure of one or two static inverters, which resulted in the loss of the remaining inverters. The loss of systems serviced by the four fixed frequency electrical buses creates an unsafe condition due to the loss of a number of the pilot's and co-pilot's flight instruments, in addition to the other avionics systems.
>
> This [Canadian] Airworthiness Directive (AD) mandates the wiring modification to untie the 400Hz inverters and additional Airworthiness Limitation tasks introduced as a result of this modification.

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 have considered the comment received.

Request To Add Airplanes to the Applicability

All Nippon Airways (ANA) requested that Bombardier, Inc. Model DHC–8–314 airplanes be added to the applicability of the NPRM (77 FR 51946, August 28, 2012). ANA stated that Bombardier Service Bulletin 8–24–87, dated May 26, 2011, included Model DHC–8–314 airplanes in its effectivity, while Bombardier Service Bulletin 8–24–87, Revision A, dated October 5, 2011, excluded it.

We disagree with ANA's request. Bombardier, Inc. Model DHC–8–314 airplanes are not on the U.S. type certificate data sheet; therefore, no change is necessary. We have not changed this final rule 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 94 products of U.S. registry. We also estimate that it will take about 9 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $71,910, or $765 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 51946, August 28, 2012), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2013–04–07 Bombardier, Inc.: Amendment 39–17364. Docket No. FAA–2012–0861; Directorate Identifier 2012–NM–074–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective April 9, 2013.

(b) Affected ADs

None.

(c) Applicability

(1) This AD applies to Bombardier, Inc. Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes, certificated in any category, serial numbers 002 through 672 inclusive.

(2) This AD requires revisions to certain operator maintenance documents to include new actions (e.g., inspections). Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these actions, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (k)(1) of this AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane.

(d) Subject

Air Transport Association (ATA) of America Code 24, Electrical Power.

(e) Reason

This AD was prompted by reports of the loss of the fixed frequency system, leading to

the loss of power to the left and right buses and all systems serviced by these buses. We are issuing this AD to prevent loss of the fixed frequency system, which could lead to loss of a number of the pilot's and co-pilot's flight instruments, in addition to other avionics systems.

(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) Wiring Modifications

Within 6,000 flight hours or 36 months after the effective date of this AD, whichever occurs first: Incorporate the wiring modifications specified in, and in accordance with, the Accomplishment Instructions of Bombardier Service Bulletin 8–24–87, Revision B, dated April 3, 2012.

(h) Airplane Maintenance Program Revision

Within 30 days after the effective date of this AD: Revise the airplane maintenance program by incorporating Task 2420/13, Operational Check of Relays K4, K5, K6, and K7 (Post Modsum 8Q101917), in the applicable temporary revision specified in paragraph (h)(1), (h)(2), or (h)(3) of this AD. The initial compliance time for Task 2420/13 is within 18,000 flight hours after accomplishing the actions specified in paragraph (g) of this AD, or 30 days after the effective date of this AD, whichever occurs later.

(1) For Model DHC–8–102, –103, and –106 airplanes: de Havilland Dash 8 Series 100 Temporary Revision AWL–117, dated April 8, 2011, to Section AWL2—Systems Maintenance, of Part 2, Airworthiness Limitations, of the Bombardier Dash 8 Series 100 Maintenance Program Manual, PSM 1–8–7.

(2) For Model DHC–8–201 and –202 airplanes: de Havilland Dash 8 Series 200 Temporary Revision AWL 2–48, dated April 8, 2011, to Section AWL2—Systems Maintenance, of Part 2, Airworthiness Limitations, of the Bombardier Dash 8 Series 200 Maintenance Program Manual, PSM 1–82–7.

(3) For Model DHC–8–301, –311, and –315 airplanes: de Havilland Dash 8 Series 300 Temporary Revision AWL 3–118, dated April 8, 2011, to Section AWL2—Systems Maintenance, of Part 2, Airworthiness Limitations, of the Bombardier Dash 8 Series 300 Maintenance Program Manual, PSM 1–83–7.

(i) No Alternative Actions or Intervals

After accomplishing the revision required by paragraph (h) of this AD, no alternative actions (e.g., inspections) or intervals may be used, unless the actions and intervals are approved as an AMOC in accordance with the procedures specified in paragraph (k)(1) of this AD.

(j) Credit for Previous Actions

This paragraph provides credit for the actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 8–24–87, dated May 26, 2011; or Bombardier Service Bulletin 8–24–87, Revision A, dated October 5, 2011; which are not incorporated by reference in this AD.

(k) 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.

(l) Related Information

Refer to MCAI Canadian Airworthiness Directive CF–2012–09, dated February 15, 2012, and the service information specified in paragraphs (l)(1) through (l)(4) of this AD, for related information.

(1) Bombardier Service Bulletin 8–24–87, Revision B, dated April 3, 2012.

(2) de Havilland Dash 8 Series 100 Temporary Revision AWL–117, dated April 8, 2011, to Section AWL2—Systems Maintenance, of Part 2, Airworthiness Limitations, of the Bombardier Dash 8 Series 100 Maintenance Program Manual, PSM 1–8–7.

(3) de Havilland Dash 8 Series 200 Temporary Revision AWL 2–48, dated April 8, 2011, to Section AWL2—Systems Maintenance, of Part 2, Airworthiness Limitations, of the Bombardier Dash 8 Series 200 Maintenance Program Manual, PSM 1–82–7.

(4) de Havilland Dash 8 Series 300 Temporary Revision AWL 3–118, dated April 8, 2011, to Section AWL2—Systems Maintenance, of Part 2, Airworthiness Limitations, of the Bombardier Dash 8 Series 300 Maintenance Program Manual, PSM 1–83–7.

(m) 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 8–24–87, Revision B, dated April 3, 2012.

(ii) de Havilland Dash 8 Series 100 Temporary Revision AWL–117, dated April 8, 2011, to Section AWL2—Systems Maintenance, of Part 2, Airworthiness Limitations, of the Bombardier Dash 8 Series 100 Maintenance Program Manual, PSM 1–8–7.

(iii) de Havilland Dash 8 Series 200 Temporary Revision AWL 2–48, dated April 8, 2011, to Section AWL2—Systems Maintenance, of Part 2, Airworthiness Limitations, of the Bombardier Dash 8 Series 200 Maintenance Program Manual, PSM 1–82–7.

(iv) de Havilland Dash 8 Series 300 Temporary Revision AWL 3–118, dated April 8, 2011, to Section AWL2—Systems Maintenance, of Part 2, Airworthiness Limitations, of the Bombardier Dash 8 Series 300 Maintenance Program Manual, PSM 1–83–7.

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

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

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

Issued in Renton, Washington, on February 11, 2013.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–04006 Filed 3–4–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–1172; Directorate Identifier 2012–CE–040–AD; Amendment 39–17365; AD 2013–04–08]

RIN 2120–AA64

Airworthiness Directives; Diamond Aircraft Industries GmbH Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for Diamond Aircraft Industries GmbH

Model H–36, HK 36 R, HK 36 TS, and HK 36 TTS airplanes. 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 installation of an unsuitable self-locking nut on the bell crank of the elevator push rod that can cause failure of the elevator, resulting in loss of control. We are issuing this AD to require actions to address the unsafe condition on these products.

DATES: This AD is effective April 9, 2013.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of April 9, 2013.

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 Diamond Aircraft Industries GmbH, N.A. Otto-Straße 5, A–2700 Wiener Neustadt, Austria, telephone: +43 2622 26700; fax: +43 2622 26780; email: *office@diamond-air.at;* Internet: *www.diamond-air.at/hk36_super_dimona+M52087573ab0.html*. 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: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; fax: (816) 329–4090; email: *mike.kiesov@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 November 5, 2012 (77 FR 66409). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> A HK 36 R aeroplane recently experienced an in-flight elevator control failure after take-off which resulted in an uncontrolled landing. The results of the subsequent investigation revealed that the elevator control rod had disconnected from the elevator bell crank in the tail section of the fuselage, as a result of installation of a non-suitable self-locking nut.
>
> The subsequent design review of the affected elevator bell crank joint with elevator control rod identified that its current configuration has a failure potential when components such as thin self-securing nuts and bearings are aging and original clearance of the control system cannot be maintained in service. Both the designs of elevator bell crank and elevator control rod are installed in DV 20 aeroplanes.
>
> This condition, if not corrected, could lead to further cases of elevator control failure, likely resulting in reduced control of the aeroplane, consequent damage to the aeroplane and injury to the occupants.
>
> To address this concern, Diamond Aircraft Industries (DAI) published Mandatory Service Bulletin (MSB) 36–108 and MSB 20–061/1 to improve the affected elevator control joint by embodiment of new design which prevents elevator bell crank and push rod disconnection.
>
> For reasons described above, this AD requires replacement of aeroplane elevator bell cranks with improved parts and prohibits installation of any previous design elevator bell crank.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (77 FR 66409, November 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 66409, November 5, 2012) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (77 FR 66409, November 5, 2012).

Costs of Compliance

We estimate that this AD will affect 25 products of U.S. registry. We also estimate that it would take about 2 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts would cost about $352 per product.

Based on these figures, we estimate the cost of this AD on U.S. operators to be $13,050, or $522 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:

2013–04–08 Diamond Aircraft Industries GmbH: Amendment 39–17365; Docket No. FAA–2012–1172; Directorate Identifier 2012–CE–040–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective April 9, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the following Diamond Aircraft Industries GmbH models and serial number (S/N) airplanes, certificated in any category: H–36 and HK 36 R airplanes, S/Ns 36.300 through 36.414; HK 36 TS airplanes, S/Ns 36.415 and 36.416; and HK 36 TTS airplane, S/N 36.393.

(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 installation of an unsuitable self-locking nut on the bell crank of the elevator push rod that can cause failure of the elevator, resulting in loss of control. We are issuing this AD to prevent disconnection of the elevator bell crank and push rod.

(f) Actions and Compliance

Unless already done, do the following actions following Diamond Aircraft Industries GmbH Mandatory Service Bulletin MSB 36–108 and Diamond Aircraft Industries GmbH Work Instruction WI–MSB 36–108, both dated February 28, 2012:

(1) Within the next 200 hours time-in-service (TIS) after April 9, 2013 (the effective date of this AD) or within the next 12 months after April 9, 2013 (the effective date of this AD), whichever occurs first, replace each elevator bell crank assembly with part number (P/N) 820–2730–12–00, and replace each elevator bell crank mount with P/N 820–2730–11–00.

(2) After April 9, 2013 (the effective date of this AD), only install on the airplane elevator bell crank assemblies with P/N 820–2730–12–00 and elevator bell crank mounts with P/N 820–2730–11–00.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; fax: (816) 329–4090; email: *mike.kiesov@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(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.

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

(h) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 2012–0173, dated September 3, 2012; Diamond Aircraft Industries GmbH Mandatory Service Bulletin MSB 36–108, dated February 28, 2012; and Diamond Aircraft Industries GmbH Work Instruction WI–MSB 36–108, dated February 28, 2012, for related information.

(i) Material Incorporated by Reference

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

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

(i) Diamond Aircraft Industries GmbH Mandatory Service Bulletin MSB 36–108, dated February 28, 2012.

(ii) Diamond Aircraft Industries GmbH Work Instruction WI–MSB 36–108, dated February 28, 2012.

(3) For Diamond Aircraft Industries GmbH service information identified in this AD, contact Diamond Aircraft Industries GmbH, N.A. Otto-Straße 5, A–2700 Wiener Neustadt, Austria, telephone: +43 2622 26700; fax: +43 2622 26780; email: *office@diamond-air.at;* Internet: *www.diamond-air.at/hk36_super_dimona+M52087573ab0.html.*

(4) You may view this service information at 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.

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

Issued in Kansas City, Missouri, on February 14, 2013.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–04089 Filed 3–4–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–1159; Directorate Identifier 2012–NM–028–AD; Amendment 39–17368; AD 2013–04–10]

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 certain Airbus Model A310–203, –204, –222, –304, –322, and –324 airplanes. This AD was prompted by a design review of the fuel tank access covers and analyses comparing compliance of the access covers to different tire burst models. 'Type 21' panels located within the debris zone revealed that they could not sustain the impact of the tire debris. This AD requires modifying the wing manhole surrounds and replacing certain fuel access panels. We are issuing this AD to prevent a possibility of a fire due to tire debris impact on the fuel access panels.

DATES: This AD becomes effective April 9, 2013.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of April 9, 2013

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

FOR FURTHER INFORMATION CONTACT: 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 November 7, 2012 (77 FR 66762). That NPRM proposed to correct an unsafe condition for the specified products. The Mandatory Continuing Airworthiness Information (MCAI) states:

> Following a design review of the fuel tank access covers and further analyses aiming at comparing compliance of the access covers to different tyre burst models, panels 'Type 21' revealed to be a matter of concern when located within the tyre debris zone. It has been demonstrated that 'Type 21' Super Plastic Formed (SPF) panels for fuel access, installed on left hand (LH) and right hand (RH) wings at manhole positions No. 1 and No. 2 of A310 aeroplanes pre-MSN500 could not sustain in an acceptable manner the impact of tyre debris.
>
> This condition, if not corrected, could result, following tyre debris impact, in fuel leaking and consequently fire on that area of the aeroplane.
>
> For the reasons described above, this [European Aviation Safety Agency (EASA)] AD requires the replacement of SPF 'Type 21' access panels with [type 11 access panels with]'Type 11A' [associated clamp plates] or 'Type 21R' access panels and concurrent modification of the manhole surrounds at positions No.1 and No.2 to prevent re-installation of 'Type 21' panels at those positions.

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 66762, November 7, 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.

Costs of Compliance

We estimate that this AD will affect 56 products of U.S. registry. We also estimate that it will take about 40 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 $6,340 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 $545,440, or $9,740 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 66762, November 7, 2012), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2013–04–10 Airbus: Amendment 39–17368. FAA–2012–1159; Directorate Identifier 2012–NM–028–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective April 9, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Model A310–203, –204, –222, –304, –322, and –324 airplanes, certificated in any category, manufacturer serial numbers 0378, 0392, 0399, 0404, 0406, 0407, 0409, 0410, 0412, 0413, 0416, 0418, 0419, 0421, 0422, 0424, 0425, 0427, 0428, 0429, 0431, 0432, 0434 to 0437 inclusive, 0439, 0440, 0441, 0443 to 0449 inclusive, 0451 to 0454 inclusive, 0456, 0457, 0458, 0467, 0472, 0473, 0475, 0476, 0478, 0480 to 0485 inclusive, and 0487 to 0499 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Reason

This AD was prompted by a design review of the fuel tank access covers and analyses comparing compliance of the access covers to different tire burst models. ''Type 21'' panels located within the debris zone revealed that they could not sustain the impact of the tire debris. We are proposing this AD to prevent a possibility of a fire due to tire debris impact on the fuel access panels.

(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) Actions

Within 60 months after the effective date of this AD, do the actions specified in paragraph (g)(1) or (g)(2) of this AD.

(1) Modify the wing manhole surrounds and replace the super plastic formed (SPF) ''Type 21'' fuel access panels at positions 1 and 2 on the left- and right-hand wings with ''Type 11'' fuel access panels with associated ''Type 11A'' clamp plates, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–57–2097, Revision 01, dated September 29, 2011.

(2) Modify the wing manhole surrounds and replace the SPF ''Type 21'' fuel access panels at positions 1 and 2 on the left- and right-hand wings with ''Type 21R'' fuel access panels, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A310–57–2033, dated July 15, 1989.

(h) Parts Installation Prohibition

After accomplishing the modification required by paragraph (g) of this AD, no person may install SPF ''Type 21'' fuel access panels at positions 1 and 2 on the left- and right-hand wings, on any airplane.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: 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.

(j) Related Information

Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2012–0016, dated January 26, 2012, and the service information specified in paragraphs (j)(1) and (j)(2) of this AD, for related information.

(1) Airbus Service Bulletin A310–57–2033, dated July 15, 1989.

(2) Airbus Mandatory Service Bulletin A310–57–2097, Revision 01, dated September 29, 2011.

(k) Material Incorporated by Reference

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

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

(i) Airbus Service Bulletin A310–57–2033, dated July 15, 1989.

(ii) Airbus Mandatory Service Bulletin A310–57–2097, Revision 01, dated September 29, 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, WA. For information on the availability of this material at the FAA, call 425–227–1221.

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

Issued in Renton, Washington, on February 14, 2013.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–04340 Filed 3–4–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–1173; Directorate Identifier 2012–CE–038–AD; Amendment 39–17367; AD 2013–04–09]

RIN 2120–AA64

Airworthiness Directives; Costruzioni Aeronautiche Tecnam srl Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for Costruzioni Aeronautiche Tecnam srl Model P2006T airplanes. 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 multiple cracks found on the outboard aileron hinge support of a P2006T airplane during an inspection. We are issuing this AD to require actions to address the unsafe condition on these products.

DATES: This AD is effective April 9, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of April 9, 2013.

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 Costruzioni Aeronautiche TECNAM Airworthiness Office, Via Maiorise—81043 Capua (CE) Italy; telephone: +39 0823 620134; fax: +39 0823 622899; email: *m.oliva@tecnam.com* or *g.paduano@tecnam.com*; Internet: *www.tecnam.com/it-IT/documenti/service-bulletins.aspx.* 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: Albert Mercado, Aerospace Engineer, FAA, Small Airplane Directorate, 901

Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4119; fax: (816) 329–4090; email: *albert.mercado@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 November 5, 2012 (77 FR 66417). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

During a 100-hour inspection of a P2006T aeroplane, multiple cracks were detected on the outboard aileron hinge support, part number (P/N) 26–1–1082–1/3.

This condition, if not detected and corrected, could jeopardize the wing structural integrity.

For the reason described above, this AD requires to inspect for crack detection all aileron hinge supports and to accomplish the applicable corrective actions.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal and the FAA's response to each comment.

Decrease Inspection Interval

Dudley Clark of Ocean Air Flight Services stated that they found a crack on an airplane at less than 300 hours time-in-service (TIS). He stated we should decrease the initial inspection interval to 200 hours TIS and the continuing checks at 50 hours TIS until compliance is met with the replacement parts.

We do not agree because we have evaluated the compliance time utilized by the State of Design in the EASA AD and determined that it provides the acceptable level of risk to mitigate the unsafe condition. The compliance time in this AD is the same as in the EASA AD. We have also provided the information about this crack to EASA (the State of Design) for their consideration.

We are making no changes to the final rule AD based on this comment.

Increase Amount of Labor

Dudley Clark of Ocean Air Flight Services stated that the labor time is understated by about half and does not include any time for painting. He recommends we increase the amount of labor required to 6 hours per wing, not including painting.

We do not agree with increasing the labor hours to 6 hours because we verified with the type certificate holder (manufacturer) that the labor rate of 3 hours takes into account service centers' knowledge of the airplane. The cost does not include the cost of painting and does not take into consideration varying circumstances and configurations of certain airplanes that may require additional work-hours to accomplish the actions.

We are making no changes to the final rule AD based on this comment.

Conclusion

We reviewed the relevant data, considered the comments received, 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 66417, November 5, 2012) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (77 FR 66417, November 5, 2012).

Costs of Compliance

We estimate that this AD will affect 7 products of U.S. registry. We also estimate that it would take about .5 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of this AD on U.S. operators to be $297.50, or $42.50 per product.

In addition, we estimate that any necessary follow-on actions would take about 3 work-hours and require parts costing $460, for a cost of $715 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this 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:

2013–04–09 Costruzioni Aeronautiche Tecnam srl: Amendment 39–17367;

Docket No. FAA–2012–1173; Directorate Identifier 2012–CE–038–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective April 9, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Costruzioni Aeronautiche Tecnam srl P2006T airplanes, serial numbers 001/US through 9999/US, certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 57, Wings.

(e) Reason

This AD was prompted by multiple cracks found on the outboard aileron hinge support of a P2006T airplane during an inspection. We are issuing this AD to require actions to address the unsafe condition on these products.

(f) Actions and Compliance

Unless already done, do the following actions following the Inspection Instructions, paragraph 2, numbers 1 through 8, in Costruzioni Aeronautiche TECNAM Service Bulletin No. SB 102–CS–Rev2, dated July 3, 2012:

(1) At the compliance times below, inspect all aileron hinge supports part numbers (P/N) 26–1–1082–1/3, P/N 26–1–1081–1/3, P/N 26–1–1081–2/4, and P/N 26–1–1082–2/4 for cracks:

(i) *For airplanes with 600 or more hours time-in-service (TIS) as of April 9, 2013 (the effective date of this AD):* Within 30 days after April 9, 2013 (the effective date of this AD) or within the next 25 hours TIS after April 9, 2013 (the effective date of this AD), whichever occurs first, and repetitively thereafter at intervals not to exceed 100 hours TIS or 12 months, whichever occurs first,

(ii) *For airplanes with less than 600 hours TIS as of April 9, 2013 (the effective date of this AD):* Within 30 days after accumulating 600 hours TIS or within 25 hours TIS after accumulating 600 hours TIS, whichever occurs first, and thereafter at intervals not to exceed 100 hours TIS or 12 months, whichever occurs first.

(2) If a crack is found during any inspection required by paragraph (f)(1) of this AD, before further flight, contact: Costruzioni Aeronautiche TECNAM at Costruzioni Aeronautiche TECNAM Airworthiness Office, Via Maiorise—81043 Capua (CE) Italy; telephone: +39 0823 620134; fax: +39 0823 622899; email: *m.oliva@tecnam.com* or *g.paduano@tecnam.com;* Internet: *www.tecnam.com/it-IT/documenti/service-bulletins.aspx;* for replacement instructions and accomplish them accordingly.

(g) Credit for Actions Accomplished in Accordance With Previous Service Information

This AD provides credit for the actions required in this AD if already done before April 9, 2013 (the effective date of this AD) following Costruzioni Aeronautiche TECNAM Service Bulletin No. SB 102–CS–Rev1, dated June 29, 2012.

(h) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Albert Mercado, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4119; fax: (816) 329–4090; email: *albert.mercado@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(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.

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

(i) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 2012–0146, dated August 6, 2012; and Costruzioni Aeronautiche TECNAM Service Bulletin No. SB 102–CS–Rev2, dated July 3, 2012, for related information.

(j) Material Incorporated by Reference

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

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

(i) Costruzioni Aeronautiche TECNAM Service Bulletin No. SB 102–CS–Rev2, dated July 3, 2012.

(ii) Reserved

(3) For Costruzioni Aeronautiche TECNAM service information identified in this AD, contact Costruzioni Aeronautiche TECNAM Airworthiness Office, Via Maiorise—81043 Capua (CE) Italy; telephone: +39 0823 620134; fax: +39 0823 622899; email: *m.oliva@tecnam.com or g.paduano@tecnam.com;* Internet: *www.tecnam.com/it-IT/documenti/service-bulletins.aspx.*

(4) You may view this service information at 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.

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

Issued in Kansas City, Missouri, on February 20, 2013.

John Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–04341 Filed 3–4–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 117 and 121

[Docket No. FAA–2012–0358]

Clarification of Flight, Duty, and Rest Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Clarification.

SUMMARY: The FAA published a final rule on January 4, 2012, that amends the existing flight, duty and rest regulations applicable to certificate holders and their flightcrew members. Since then, the FAA has received numerous questions about the new flight, duty, and rest rule. This is a response to those questions.

FOR FURTHER INFORMATION CONTACT: For technical questions, contact Dale E. Roberts, Air Transportation Division, Flight Standards Service, Federal Aviation Administration; email *dale.e.roberts@faa.gov*. For legal questions, contact Robert Frenzel, Regulations Division, Office of the Chief Counsel, Federal Aviation Administration; email *robert.frenzel@faa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On January 4, 2012, the FAA published a final rule entitled,

''Flightcrew Member Duty and Rest Requirements'' (77 FR 330). In that rule, the FAA created new part 117, which replaces the existing flight, duty, and rest regulations, contained in Subparts Q, R, and S, for part 121 passenger operations. As part of this rulemaking, the FAA also applied the new 14 CFR part 117 to certain 14 CFR part 91 operations, and permitted all-cargo operations operating under 14 CFR part 121 to voluntarily opt into the part 117 flight, duty, and rest regulations.

On April 5, 2012, the FAA published a notice explaining the procedures for submitting clarifying questions concerning these flight, duty, and rest regulations.[1] Since then, the FAA received numerous questions concerning the new regulations. This is a response to those questions.

II. Discussion

A. Applicability

i. Applicability of Previous Flight, Duty, and Rest Interpretations to Part 117

Airlines for America (A4A) asked whether previous interpretations of the part 121 flight, duty, and rest rules are applicable to part 117.

Part 117 creates a new flight, duty, and rest regulatory scheme for part 121 passenger operations. As such, some interpretations of the regulatory scheme that preceded part 117 may have limited or no applicability to the provisions of part 117. The FAA will decide on a case-by-case basis to what extent an existing flight, duty, and rest interpretation applies to part 117.

ii. Voluntary Implementation of Part 117 Before January 4, 2014

A4A asked whether carriers can implement more restrictive portions of part 117 before the effective date of the final rule that created part 117.

The flight, duty, and rest rule that created part 117 will become effective on January 4, 2014.[2] Until then, passenger operations operating under part 121 must comply with the flight, duty, and rest requirements set out in Subparts Q, R, and S of part 121. If a carrier wishes to voluntarily comply with a provision of part 117 before January 4, 2014, the carrier can do so as long as it also remains compliant with the provisions of Subparts Q, R, and S as applicable.

For example, 14 CFR 121.471(b) and (c) specify the amount of rest that a flight crewmember on a domestic operation must receive in a 24-hour period. However, these subsections do not require that the rest period include an 8-hour sleep opportunity. Conversely, § 117.25(e) and (f)[3] will require that a rest period have an 8-hour uninterrupted sleep opportunity when part 117 becomes effective. Thus, a certificate holder operating a domestic operation who wishes to voluntarily ensure that its flight crewmembers have an 8-hour sleep opportunity during a rest period can do so because the sleep opportunity will not violate the provisions of § 121.471(b) and (c).

The FAA emphasizes, however, that, before January 4, 2014, a certificate holder can only comply with those provisions of part 117 that do not contradict the requirements of Subparts Q, R, and S. For example, a certificate holder who wishes to engage in augmentation on domestic flights cannot do so before January 4, 2014, because, even though part 117 permits domestic augmentation, Subpart Q, which governs domestic operations, does not allow domestic augmentation. Likewise, a certificate holder operating supplemental passenger flights who wishes to avoid the compensatory rest requirements of Subpart S cannot rely on part 117 to do so before January 2014 because, even though part 117 largely eliminates compensatory rest, part 117 does not become effective until January 2014.

iii. Part 91 Flights

Air Line Pilots Association, International (ALPA) and an individual commenter asked what amount of rest is necessary between a part 121 passenger flight and a part 91 ferry flight so that the part 91 flight does not have to function under part 117. ALPA asked whether part 91 operations that are not conducted under part 117 count toward the cumulative limits of part 117. Alaska Air asked whether a pilot who is only assigned part 91 flights (and does not have any part 121 assignments) is subject to part 117.

Part 117 applies to all part 91 operations (other than Part 91 Subpart K) that are directed by a part 121 certificate holder ''if any segment'' is conducted as a part 121 passenger flight.[4] Part 117 also applies to all flightcrew members who are participating in a part 91 operation (other than Part 91 Subpart K) on behalf of a part 121 certificate holder ''if any flight segment'' is conducted as a part 121 passenger flight.[5] As an initial matter, we note that a flightcrew member who flies only on part 91 operations is not subject to part 117.[6] In addition, because part 117 does not apply to part 91 operations that are not conducted by or on behalf of a part 121 certificate holder, the remainder of this answer discusses part 91 operations that are conducted by or on behalf of a part 121 certificate holder. This answer also assumes that the part 91 operations it discusses are not conducted under Subpart K of part 91.

The definition of flight duty period (FDP) in part 117 specifies that two flight segments are part of the same FDP if a ''required intervening rest period'' has not been provided between those flight segments.[7] A ''required intervening rest period'' is the rest period that is specified in § 117.25. Pursuant to § 117.25(e), that rest period must be 10 consecutive hours of rest with an 8-hour uninterrupted sleep opportunity. However, depending on the specific nature of an individual flightcrew member's schedule, the other subsections of § 117.25 may require a longer rest period. For example, if a flightcrew member has not been provided 30 consecutive hours of rest in the preceding 168-hour period, the ''required intervening rest period'' would be 30 consecutive hours pursuant to § 117.25(b).

Applying this discussion to the questions raised above, if a flightcrew member flies a part 121 passenger flight segment and a part 91 ferry flight segment without being provided an intervening rest period that satisfies § 117.25, those flight segments would be part of the same FDP.[8] Consequently, just like the part 121 passenger flights, the part 91 ferry flight segment would have to be conducted under the flight, duty, and rest rules of part 117.[9] However, if a flightcrew member is provided with the rest period specified in § 117.25 between the part 91 ferry flight segment and the part 121 passenger flight segment, those flight segments would not be part of the same FDP. In that case, the part 91 ferry flight segment would not be subject to the flight, duty, and rest provisions of part 117. For purposes of this analysis, it is irrelevant whether the part 91 ferry flight segment takes place before or after the part 121 passenger flight segment—what matters is whether a rest period

[1] 77 FR 20530 (Apr. 5, 2012).

[2] *See* 77 FR 28763 (May 16, 2012).

[3] The regulatory provisions of part 117 can be found at 77 FR 398 (Jan. 4, 2012).

[4] 14 CFR 117.1(b).

[5] 14 CFR 117.1(c).

[6] *See* 77 FR at 336 (stating that ''pilots flying only part 91 passenger operations * * * are not subject to the provisions of this rule'').

[7] *See* 14 CFR 117.3, Flight Duty Period (stating that activities that occur between flight segments are part of the FDP unless a required intervening rest period has been provided).

[8] *See* § 117.3 (definition of flight duty period).

[9] *See* § 117.1(b) and (c).

that satisfies § 117.25 was provided between the two flight segments.

We note, however, that the cumulative limitations set out in § 117.23 include ''all flying by flightcrew members on behalf of any certificate holder or 91K Program Manager.'' [10] Thus, even if a part 91 flight is not operated pursuant to part 117, that flight still counts for purposes of the cumulative limitations of part 117 if it is flown on behalf of a certificate holder or 91K Program Manager.

B. Definitions

i. Deadhead Transportation

1. Length of Deadhead

The Southwest Airlines Pilots Association (SWAPA) asked whether a flightcrew member could deadhead beyond the limits of Table B. SWAPA also asked whether there was a limit to the period of time that a flightcrew could be engaged in deadhead transportation at the conclusion of an FDP.

Pursuant to the definition of FDP in § 117.3, deadhead transportation that is followed by a flight segment without an intervening rest period is part of an FDP and is subject to the FDP limits in Tables B and C. All other deadhead transportation is not part of an FDP and is not subject to any limits under part 117. However, if the deadhead transportation exceeds the limits of Table B, § 117.25(g) requires that the flightcrew member engaging in the deadhead transportation be provided with a compensatory rest period before beginning his/her next FDP.

2. Transportation to a Suitable Accommodation

ALPA asked whether there is a limit to how far a drive can be to still be considered transportation to/from a suitable accommodation.

The definition of deadhead transportation in § 117.3 states that ''transportation to or from a suitable accommodation'' is not deadhead transportation. ''Transportation to or from a suitable accommodation'' refers to transportation that is conducted for the purposes of a split-duty or mid-duty rest pursuant to § 117.15 and/or § 117.27. While this type of transportation is not deadhead transportation, it is part of an FDP as split-duty and mid-duty rest take place between flight segments. Accordingly, transportation for split-duty and mid-duty rest would be limited by the pertinent FDP limits.

The FAA emphasizes that transportation provided for a rest period required by § 117.25 would not be considered ''transportation to or from a suitable accommodation'' for deadhead purposes because there is no requirement in § 117.25 that rest periods must be provided in a suitable accommodation.

ii. Duty

1. Collective Bargaining Agreement Requirement

A4A asked whether a requirement in the collective bargaining agreement to check a schedule or calendar, or to acknowledge a trip assignment, is considered duty.

Section 117.3 defines duty as ''any task that a flightcrew member performs as required by the certificate holder * * *'' Thus, if a certificate holder requires that a flightcrew member check a schedule or calendar, or acknowledge a trip assignment, then the flightcrew member's compliance with that requirement would be considered duty. The collective bargaining agreement has no impact on this analysis, as this agreement simply provides the legal basis for the certificate holder to require a flightcrew member to perform certain actions.

2. Limitations on Duty

SWAPA asked whether there are any limits on duty aside from the FDP limitations.

The flight, duty, and rest notice of proposed rulemaking (NPRM) proposed a set of cumulative duty-period limits. However, in response to comments, the final rule eliminated those limits.[11] As such, duty periods that are not part of an FDP are only limited to the extent that they may cause a flightcrew member to be too tired to safely perform his or her assigned duties.

iii Flight Duty Period (FDP)

1. Type of Duty That Is Included in an FDP

SWAPA asked for clarification about the type of duty that is part of an FDP. SWAPA provided the following three types of duty as examples, and it asked which of these examples would be part of an FDP: (1) duty prior to an FDP; (2) duty after an FDP; and (3) flight training device duty after an FDP.

The definition of FDP in § 117.3 states that ''[a] flight duty period includes the duties performed by the flightcrew member on behalf of the certificate holder that occur before a flight segment or between flight segments without a required intervening rest period.'' Thus, duty that occurs prior to an FDP is part of that FDP if there is no required intervening rest period between the duty and the flight segments that make up the FDP. Duty that takes place after an FDP, such as flight training device duty, is not part of an FDP, as it does not occur before a flight segment or between flight segments.

2. Meaning of ''Futher Aircraft Movement''

Horizon Air (Horizon) and Regional Airline Association (RAA) asked whether the phrase ''further aircraft movement'' in the FDP definition meant movement for the purpose of flight. These commenters provided the following example. An aircraft is parked following the last flight and passengers deplane. The pilot then repositions the aircraft on the ground to a hangar. The commenters asked whether, in this situation, the FDP ends when the aircraft is first parked and deplaned. Another commenter, Alaska Air, asked whether time spent repositioning a plane from customs to a domestic gate would be part of an FDP.

The definition of FDP in § 117.3 states that an FDP ends ''when the aircraft is parked after the last flight and there is no intention for further aircraft movement by the same flightcrew member.'' The phrase ''further aircraft movement'' in the FDP definition does not say that the movement must be for the purpose of flight. Rather, any aircraft movement by the flightcrew member is part of that flightcrew member's FDP. Thus, moving the aircraft between different gates or moving the aircraft to a hangar would be considered ''aircraft movement'' and it would be part of a flightcrew member's FDP.

iv. Physiological Night's Rest

Allied Pilots Association (APA) asked whether the 8-hour sleep opportunity required by § 117.25 must take place between the hours of 0100 and 0700.

Subsections (e) and (f) of § 117.25 require that immediately prior to beginning an FDP, a flightcrew member must be provided with a 10-hour rest period that includes an 8-hour uninterrupted sleep opportunity. These subsections do not require that the 8-hour sleep opportunity take place during a specific time of day—they simply require that an 8-hour sleep opportunity be provided at some point during the 10-hour rest period.

v. Rest Facility

A4A asked about the publication date of Advisory Circular (AC) 121–31 Flightcrew Sleeping Quarters and Rest

[10] § 117.23(a).

[11] *See* 77 FR at 379.

Facilities. A4A also asked: (1) What the approval process will be like for rest facilities; and (2) what constitutes ''near flat'' for purposes of the Class 2 rest facility definition.

The AC that provides guidance for rest facilities has been renamed as AC 117–1, and was published on September 19, 2012. This AC discusses what ''near flat'' means for purposes of qualifying a rest facility as Class 2. As far as the approval process for rest facilities, the FAA will approve rest facilities through an Operation Specification (OpSpec) that will specify the class(es) of rest facility that are inside a certificate holder's aircraft.

vi. Suitable Accommodation

APA asked whether a layover facility could be a suitable accommodation. APA also asked whether a room that has multiple reclining chairs with multiple individuals resting could be a suitable accommodation.

A layover facility could be a suitable accommodation if it meets the definition of suitable accommodation set out in § 117.3. A room that has multiple reclining chairs with multiple individuals resting could also be a suitable accommodation if it meets the suitable accommodation requirements of § 117.3. The FAA emphasizes that the definition of suitable accommodation in § 117.3 does not require that access to a suitable accommodation be limited so that only one person can use it at any given time.

C. Fitness for Duty

i. Means of Certification

A4A and Alaska Air asked whether flightcrew members could use electronic means, such as Aircraft Communications Addressing and Reporting System (ACARS) and cell phone applications, to certify their fitness for duty.

Subsection 117.5(d) states that ''[a]s part of the dispatch or flight release, as applicable, each flightcrew member must affirmatively state he or she is fit for duty prior to commencing flight.'' This subsection does not preclude a flightcrew member from making his/her fitness for duty statement through electronic means. However, the preamble to the final rule explains that the fitness for duty statement ''must be signed by each flightcrew member.'' [12] Accordingly, if a flightcrew member chooses to submit his/her fitness for duty statement through electronic means, that flightcrew member would have to electronically sign the statement and the electronic signature would have to comply with the pertinent electronic signature requirements.

ii. Certifying as to Specific Flight Segments

Horizon and RAA were concerned with the following scenario. A pilot reports fit for an FDP that includes 6 flight segments. After the fourth flight segment, the pilot notifies the company that he will be too fatigued to fly the sixth flight segment, but will be fit to fly the fifth flight segment. Horizon and RAA asked whether § 117.5(c) allowed the company to permit the pilot to fly the fifth flight segment.

Section 117.5 places a joint responsibility for fitness for duty on the certificate holder and the flightcrew member. The flightcrew member must: (1) Report for an FDP ''rested and prepared to perform his/her duties;'' (2) sign a statement before beginning a flight segment affirmatively stating that he or she is fit for duty; and (3) immediately notify the certificate holder if he/she is too fatigued to perform the assigned duties. For its part, the certificate holder must: (1) ''Provide the flightcrew member with a meaningful rest opportunity that will allow the flightcrew member to get the proper amount of sleep;'' [13] (2) immediately terminate a flightcrew member's FDP if the flightcrew member does not affirmatively state before beginning a flight segment that he/she is fit to safely perform the assigned duties; and (3) immediately terminate a flightcrew member's FDP if the flightcrew member informs the certificate holder that he/she is too tired to safely perform the assigned duties.

In the example provided by Horizon and RAA, a flightcrew member certifies, pursuant to § 117.5(d), that he is fit to fly the fifth flight segment but will not be fit to fly the sixth flight segment. Because § 117.5 does not require a certificate holder to second-guess a fitness-for-duty certification made by a flightcrew member, the company would not violate § 117.5(c) if it permits the flightcrew member to take off on the fifth flight segment. However, the FAA emphasizes that the flightcrew member in this example would be in violation of § 117.5 if he certifies that he is fit for duty when he is actually too tired to safely perform the assigned duties.

The FAA also cautions certificate holders that, as the preamble to the final rule explains, ''there are objective signs that could be used to identify crewmember fatigue.'' [14] ''The FAA has simply chosen not to impose a mandatory regulatory requirement because the signs used to identify fatigue cannot be synthesized into a general objective standard.'' [15] Thus, § 117.5 should not be read as prohibiting a certificate holder from voluntarily terminating the FDP of a fatigued flightcrew member who does not self-report his/her fatigue. Indeed, the FAA strongly encourages certificate holders to voluntarily terminate the FDPs of flightcrew members who are showing signs of fatigue.

D. Fatigue Risk Management System (FRMS)

i. Scope of an FRMS

ALPA also asked: (1) Whether a certificate holder could use an FRMS to avoid a large portion of part 117 (e.g. all of Table A); (2) whether FRMS authorization is applied on a route-specific basis; (3) whether route-specific data could be used to justify an FRMS on another route; and (4) whether each certificate holder's FRMS request must be supported by data that is specific to that certificate holder.

Section 117.7 permits a certificate holder to exceed the provisions of part 117 pursuant to a Fatigue Risk Management System (FRMS) ''that provides for an equivalent level of safety against fatigue-related accidents or incidents.'' The preamble to the final rule clarifies that ''a certificate holder may use an FRMS for any of the elements of the flight and duty requirements provided under this rule.'' [16] Thus, a certificate holder can submit a wide range of FRMS requests ranging from narrow requests concerning a specific route to broad requests that seek to establish alternatives to large portions of part 117. However, because an FRMS request has to be supported by evidence showing an equivalent level of safety if the FRMS is approved, a broad FRMS will likely be more difficult to obtain than a narrow FRMS.

The specific data that could be used to support an FRMS request would depend on the nature of the request and the nature of the certificate holder's operations. While certificate holders are not prohibited from using each other's data for an FRMS request, the FAA plans to evaluate each certificate holder's FRMS request on an individual basis. Because of the differences between certificate holders' specific operations, the FAA expects that each FRMS request will be tailored to the

[12] 77 FR at 350.

[13] 77 FR at 349.

[14] 77 FR at 349.

[15] *Id.*

[16] 77 FR at 354.

requesting certificate holder's operations, and the FAA will not allow multiple certificate holders to operate under the same FRMS.

ii. Implementing an FRMS Before January 4, 2014

ALPA asked whether a certificate holder could implement an FRMS before January 4, 2014.

The final rule that created the FRMS alternative for the flight, duty, and rest requirements in parts 117 and 121 will not become effective until January 4, 2014.[17] While certificate holders can immediately begin gathering data that will be used to support an FRMS request, the FAA cannot actually approve an FRMS until the pertinent regulations become effective, which will be January 4, 2014.

E. Fatigue Education and Awareness Training Program

i. Whether the Program Has To Be Approved or Accepted

Alaska Air pointed out that § 117.9(a) requires that a fatigue education and awareness training program must be approved by the FAA Administrator while § 117.9(c) requires that updates to the program must be accepted by the FAA Administrator. Alaska Air asked whether the fatigue education and awareness training program has to be approved or accepted by the Administrator.

Subsection 117.9(a) states that the initial fatigue education and awareness training program must be approved by the FAA and § 117.9(c)(1) states that updates to this program only need to be accepted by the FAA. The FAA considers a minor change to the program to be an update that does not need to go through the approval process. That is why § 117.9(c) only requires FAA acceptance for these types of changes. Conversely, the initial fatigue education and awareness training program and all non-minor changes to that program must receive FAA approval per § 117.9(a). The FAA emphasizes that a major change to the fatigue education and awareness training program would be considered a new program, and this change would have to be approved by the FAA before it is implemented.

ii. Whether Training Needs To Begin Before January 4, 2014

A4A asked whether fatigue education and awareness training pursuant to § 117.9 must begin before January 4, 2014.

The final rule that created part 117 will not become effective until January 4, 2014.[18] Accordingly, certificate holders are not required to comply with the fatigue education and training requirements of § 117.9 until January 4, 2014. The FAA notes, however, that a part 121 certificate holder is currently responsible for fulfilling its obligations under its Fatigue Risk Management Plan.

iii. Completion Date for Initial Training

Alaska Air asked about the deadline by which initial fatigue education and awareness training needs to be completed. Alaska Air also asked whether training under § 117.9 is mandated every 12 months or every calendar year.

Subsection 117.9(a) requires that the fatigue education and awareness training program must provide ''annual education and awareness training.'' The FAA interprets the word ''annual'' as referring to a 12-calendar-month period. Because the training must be provided on an annual basis, the initial fatigue education and awareness training must be completed within 12 calendar months after the certificate holder's program has been approved by the Administrator.

iv. Credit for Previously-Completed Training

Alaska Air also asked whether credit would be provided for previously-completed training.

The preamble to the final rule specifies that covered personnel do not need to repeat fatigue education and awareness training ''if that training meets the requirements of [§ 117.9].''[19]

F. Flight Time Limitations

The FAA received a number of questions concerning FDP and flight time extensions. This section answers questions concerning the flight-time extension. Discussion of FDP extensions is set out in another section.

i. Taking Off Knowing That the Flight Will Exceed Flight Time Limits

A4A and ALPA asked whether a crew can depart if they show up to the airport and the weather conditions indicate that the flight will exceed flight time limits. SWAPA asked whether an aircraft must return to the gate if, after taxi out but prior to takeoff a flightcrew member is forecast to exceed flight time limits.

Section 117.11 sets out the flight time limitations for augmented and unaugmented flights. Subsection 117.11(b) allows a flightcrew member to exceed these limitations to the extent necessary to safely land the aircraft at the next destination or alternate airport ''[i]f unforeseen operational circumstances arise after takeoff that are beyond the certificate holder's control.'' The preamble to the final rule explains that this exception was added to prevent diversions because ''[i]f unexpected circumstances significantly increase the length of the flight while the aircraft is in the air, the only way for a flightcrew member to comply with the flight-time limits imposed by this rule would be to conduct an emergency landing.''[20] However, the preamble emphasizes that ''this extension only applies to unexpected circumstances that arise after takeoff,'' and ''[i]f a flightcrew member becomes aware, before takeoff, that he or she will exceed the applicable flight-time limit, that flightcrew member may not take off, and must return to the gate.''[21]

Thus, if a flightcrew member finds out before takeoff that the flight segment that he/she is about to fly will cause him/her to exceed the flight time limits, that flightcrew member may not take off. It does not matter if the flightcrew member acquires this knowledge after taxi out because, as the preamble to the final rule explains, until the flightcrew member actually takes off from the airport, that flightcrew member is still able to return to the gate without a diversion. Accordingly, if a flightcrew member finds out after taxi out but before takeoff that the flight segment that he or she is about to fly will cause him/her to exceed the pertinent flight-time limit, that flightcrew member must return to the gate.

SWAPA provided an example of a 4-leg FDP with a 9-hour flight-time limit in which the crew realizes, after Leg 2, that their total flight time will be 9 hours and 5 minutes if they complete the remaining two legs. SWAPA then asked whether the fligthcrew can depart on Leg 3 of this FDP. In response, the FAA notes that if completing Leg 3 of the scheduled FDP will not cause the flightcrew to exceed the 9-hour flight-time limit, then the flightcrew can take off on Leg 3.

SWAPA and ALPA also provided another example. In this example, a flightcrew member exceeds the limits of Table A and lands at an alternate airport due to unforeseen operational circumstances that arose after takeoff and were beyond the certificate holder's control. SWAPA and ALPA asked whether the flightcrew member could,

[17] *See* 77 FR 28763 (May 16, 2012).

[18] *See* 77 FR 28763 (May 16, 2012).

[19] *See* 77 FR at 352.

[20] 77 FR at 363.

[21] *Id.*

after landing, proceed to a follow-on leg from the alternate airport to the original destination.

As discussed above, a flightcrew member cannot take off on a flight segment if he knows that taking off on that flight segment will cause him to exceed the pertinent flight-time limit. In SWAPA and ALPA's example, a flightcrew member exceeds his flight-time limit while flying to an alternate airport. Thus, the flightcrew member will have already exceeded the pertinent flight-time limit upon landing at the alternate airport. Accordingly, once the flightcrew member lands at the alternate airport, that flightcrew member cannot commence any flight segments under part 117 until he/she receives a legal rest period.

ii. Flight Time During a Taxiing Delay

APA provided three scenarios in which an aircraft, prior to takeoff, waits for an hour at a holding spot on a ramp and then takes off. In two of the scenarios, the aircraft: (1) Taxies to the holding spot under its own power, (2) shuts down its engines once it reaches the holding spot; and (3) restarts its engines, finishes taxiing, and takes off once the one-hour wait is over. In the third scenario, the aircraft is towed to the holding spot for the one-hour wait, and once the wait is over, restarts its engines and proceeds to taxi out and takeoff. APA asked whether there was any difference as far as how flight time is calculated for these three scenarios.

Section 1.1 states that flight time ''commences when an aircraft moves under its own power for the purposes of flight and ends when the aircraft comes to rest after landing.'' The FAA has previously found that ''the time spent towing the airplane prior to the moment it first moves under its own power for the purpose of flight is not flight time.'' [22] However, once the airplane moves under its own power with the intention to eventually take off, that movement is part of flight time even if the airplane shuts down its engines at some point during this process.[23] Thus, the FAA concluded that if, before takeoff, an airplane taxies to a de-icing station on its own power, the de-icing procedures are part of flight time even if the airplane's engines are shut down during the de-icing process.[24]

Applying the above discussion to APA's scenarios, in the first two scenarios an airplane taxies to a holding spot under its own power with the intention of eventually taking off on a flight. In those two scenarios, the time spent taxiing to the holding spot and the time spent at the holding spot would be considered flight time. As the FAA's previous interpretations point out, the fact that the airplane shuts down its engines at the holding spot is irrelevant for flight time purposes, as the airplane has moved under its own power with the intention of eventually taking off. In APA's third scenario, the airplane is towed to the holding spot and does not arrive to that spot on its own power. In that scenario, the time spent towing the airplane and the time that the airplane spends at the holding spot would not be flight time because that time occurs prior to when the aircraft first moves under its own power.

iii. Repositioning From Customs to a Domestic Gate

Alaska Air asked whether time spent repositioning a plane from customs to a domestic gate would constitute flight time. For purposes of this question, we will assume that everyone, including the flightcrew, exits the plane at the customs gate in order to go through customs and passport control.

As discussed above, flight time ''commences when an aircraft moves under its own power for the purposes of flight and ends when the aircraft comes to rest after landing.''[25] An empty plane that is parked at a customs gate has come to a rest. As such, the flight time from the previous flight segment flown by that airplane is no longer running, as the plane has come to a rest after landing. When the airplane is subsequently moved from customs to a domestic gate, that movement would not be for purposes of flight because the purpose of the movement would be to move the plane to another gate. Accordingly, in Alaska Air's scenario, moving an airplane from customs to a domestic gate after a flight would not constitute flight time. However, we note that, as discussed above, this movement would be part of a flightcrew member's FDP.

G. Flight Duty Period: Unaugmented Operations

i. Adjusting FDP Start Time

A number of commenters also asked whether FDP start time of a flightcrew member could be delayed by notifying that flightcrew member of the delay before beginning his/her FDP.

In the preamble to the final flight, duty, and rest rule, the FAA stated that ''FDP limits are determined by scheduled reporting time and not by actual reporting time.''[26] The scheduled reporting time for an FDP is created once that FDP has been assigned to a flightcrew member. In order to change this scheduled reporting time, the flightcrew member would have to be shifted into either long-call or short-call reserve for the pertinent FDP.

If long-call reserve is used to change the FDP start time, the flightcrew member would have to be provided proper notification of the change to the previously-scheduled FDP. Pursuant to the definition of long-call reserve in § 117.3, a flightcrew member on long-call reserve must be notified of the change to FDP start time before he or she begins the rest period specified in § 117.25. In addition, if the FDP infringes on the window of circadian low (WOCL), § 117.21(d) requires that the flightcrew member receive a 12-hour notice of the change to the FDP start time.

If short-call reserve is used to change the FDP start time, the flightcrew member would have to be placed on short-call reserve at the time that his FDP was originally scheduled to begin. In that scenario, instead of beginning an FDP at the originally-scheduled start time, the flightcrew member would simply begin his reserve availability period (RAP) pursuant to § 117.21. The FAA emphasizes that if an FDP start time is not changed pursuant to the long-call or short-call reserve provisions of § 117.21, then the FDP begins at the time that it was originally scheduled to begin.[27]

ii. Adjusting the Number of Flight Segments

A number of commenters asked whether a diversion on an unaugmented flight counts as a flight segment in Table B that would change a flightcrew member's maximum FDP limit. American Eagle (AE) asked whether cancelling previously-scheduled flight segments after an FDP has begun would affect the applicable FDP limit. Horizon asked whether a flight that is aborted after taxi out but before takeoff counts as a flight segment. Horizon also asked whether, in that situation, the taxi-out time would count as FDP and/or flight time.

The unaugmented FDP limits in Table B are determined using two pieces of information: (1) The time that the FDP is scheduled to begin, and (2) the

[22] Letter to James W. Johnson from Donald Byrne, Assistant Chief Counsel (June 22, 2000) (quoting Memorandum to AGL–7, from Dewey R. Roark, Jr., Acting Associate General Counsel, Regulations and Codification Division (Oct. 18, 1972)).

[23] *See* Johnson Letter.

[24] *Id.*

[25] *See* § 1.1 (definition of flight time).

[26] 77 FR at 358.

[27] *See id.* (stating that an FDP begins to run at the time that it is scheduled to begin even if the flightcrew member arrives late).

number of flight segments that will be flown during the FDP. Once an FDP begins, the scheduled time of start cannot be changed, as that FDP has already started.[28] However, a certificate holder can change the number of flight segments in an FDP after that FDP has started by either assigning the flightcrew members additional flight segments or cancelling previously-scheduled flight segments. A change in the number of flight segments assigned to a flightcrew member would change the pertinent FDP limit in Table B.

Thus, a certificate holder could potentially decrease or increase the applicable FDP limit by assigning additional flight segments or cancelling previously-assigned flight segments. For example, consider a 3-segment unaugmented FDP that begins at 1100. Pursuant to Table B, the FDP limit applicable to this FDP is 13 hours. However, if the certificate holder cancels one of the flight segments after the FDP begins, then the pertinent FDP limit would increase to 14 hours, as that is the limit that applies to a 2-segment unaugmented FDP that starts between 0700 and 1159.

The FAA cautions that changing the number of flight segments may not always change the pertinent FDP limit. For example, a flightcrew member could be assigned to an unaugmented FDP consisting of four flight segments that begins at 0800. The applicable FDP limit for that FDP would be 13 hours. If a certificate holder subsequently cancels one of the four segments, the applicable FDP limit would still be 13 hours because Table B assigns the same FDP limit to three and four-segment FDPs that are scheduled to start between 0700 and 1159.

Turning to diversions, the portion of the final rule preamble that discusses flight segments makes no mention of a diversion counting as a separate flight segment.[29] Accordingly, because there was no intent to treat diversions as flight segments, a diversion does not constitute a new flight segment for purposes of part 117. However, we emphasize that, while a diversion may not count as a flight segment, the time spent on diversion would still count for purposes of the FDP and flight time limits. This is because the flight-time limit applies to all time that is spent piloting an aircraft and the FDP limit applies to all time between when a pilot first reports for duty with the intention of flying a plane and when the pilot completes his/her final flight segment.

With regard to cancelled flights, if a flight is cancelled before takeoff, then it does not count as a segment for Table B purposes. This is because a flight segment consists of a takeoff and a landing, and the lack of a takeoff/landing means that there is no flight segment. However, the taxi out time for the cancelled flight segment would still constitute FDP time because the taxi out would have taken place after the flightcrew member reported for duty with the intention of conducting a flight.[30] If the aircraft moved under its own power for the taxi out, then the taxi out would also count as flight time because the aircraft would have moved under its own power for purposes of flight.[31]

H. Split Duty

i. Extending the 14-hour Split Duty Limit

A4A asked whether the maximum 14-hour split duty limit could be extended. In response, the FAA notes that § 117.15(f) explicitly states that the combined time of the FDP and the split-duty rest opportunity may not exceed 14 hours. Section § 117.15 does not indicate that there are any exceptions to this 14-hour limit. Thus, if the combined split duty rest opportunity and FDP time of a flightcrew member exceeds 14 hours, then the amount of split duty rest that caused the exceedance would not count as split duty. Instead, this time would simply count as part of the flightcrew member's FDP, and it would be subject to the FDP extensions specified in § 117.19.

ii. Actual Split Duty Rest Exceeding Scheduled Rest

An individual commenter asked about a situation in which the actual split duty rest exceeds the scheduled split duty rest. The individual commenter asked whether in that situation it would be the actual or scheduled rest that would be considered split-duty rest under § 117.15.

Subsection 117.15(d) states that the actual split-duty rest opportunity may not be less than the scheduled split-duty rest opportunity. However, § 117.15 does not prohibit actual split-duty rest from exceeding the scheduled split-duty rest. If the actual split-duty rest period exceeds the scheduled rest period, then the actual rest provided to the flightcrew member would be considered split-duty as long as that rest period is within the 14-hour limit specified in § 117.15(f).

iii. Time Zone on Which Split Duty Rest is Based

Horizon and RAA asked whether the time zone used for § 117.15(a) is determined using base/acclimated or local time.

Subsection 117.15(a) states that the split-duty rest opportunity must be ''provided between the hours of 22:00 and 05:00 *local time.''* (emphasis added). Thus, in order to determine compliance with § 117.15(a), the certificate holder must use local time at the location where the split-duty rest is being provided regardless of whether the flightcrew member is acclimated to the theater that encompasses that location.

I. Flight Duty Period: Augmented Operations

i. Three-Flight-Segment Limit

A4A and ALPA asked whether the three-flight-segment limit on augmented operations can be extended for diversions. ALPA also asked whether this limit could be extended if the diversion is for a fuel stop made necessary by winds or other operational issues.

Subsection 117.17(d) prohibits an augmented FDP from exceeding three flight segments. However, as discussed above, a diversion is not a flight segment. Accordingly, a diversion would not count toward the 3-segment limit that applies to augmented operations.

ii. Mixed Operations

APA and ALPA asked whether augmentation could be used to increase the limits on an FDP that is already in progress. The FAA will assume that the FDP in question began as an unaugmented FDP.

In the preamble to the final flight, duty, and rest rule, the FAA explained that ''if an FDP contains both an augmented and an unaugmented flight, that FDP is subject to the unaugmented FDP-limits set out in Table B and the unaugmented flight-time limits set out in Table A.'' [32] Accordingly, an unaugmented flightcrew member's FDP limit cannot be increased by augmenting the flightcrew.

iii. Time Each Augmented Flightcrew Member Spends at the Controls

ALPA asked whether there is any restriction on the amount of time that each flightcrew member on an augmented flightcrew can spend at the

[28] As discussed above, in order to change a previously-scheduled FDP, a certificate holder must comply with the long-call-reserve notice requirements.

[29] *See* 77 FR at 356–57.

[30] *See* § 117.3.

[31] *See* § 1.1 (definition of flight time).

[32] 77 FR at 368.

controls of the aircraft. Subsection 117.17(c) states that the pilot flying the aircraft during landing must be provided with a two-consecutive-hour in-flight rest opportunity in the second half of his/her FDP. This subsection also states that the pilot performing monitoring duties during landing must be provided with a 90-consecutive-minute in-flight rest opportunity. Apart from these required rest opportunities, there is no restriction as to the amount of time that a pilot can spend at the controls of an aircraft during an operation that meets the pertinent FDP, flight time, and cumulative limits.

iv. Broken Rest Facility

ALPA asked a number of questions about how to treat a rest facility that is broken. First, ALPA asked whether an aircraft with a Class 3 rest facility can continue to operate under the Class 3 augmented FDP limits if the designated rest seat is inoperative. Second, ALPA asked whether an aircraft with a Class 2 rest facility with a non-functional privacy curtain would be subject to the Class 2 or Class 3 augmented FDP limits.

In order to qualify as a Class 1, 2, or 3 rest facility, a rest facility must meet the specific definition for the pertinent class of rest facility set out in § 117.3. The definitions of rest facility in § 117.3 presume that a rest facility is fully functional. Thus, if a required part of a rest facility stops functioning, the certificate holder would need to use the minimum-equipment-list (MEL) provisions of § 121.628 in order to prevent a downgrade of that rest facility. If the non-functional part of the rest facility does not meet the pertinent MEL requirements, then that part cannot be used to meet the rest-facility standards set out in § 117.3.

Turning to ALPA's questions, § 117.3 defines a Class 3 rest facility as ''a seat in an aircraft cabin or flight deck that reclines at least 40 degrees and provides leg and foot support.'' If a seat is inoperative and cannot recline at least 40 degrees, then, if it does not satisfy the MEL provisions of § 121.628, that seat would not meet the requirements for a Class 3 rest facility. Similarly, § 117.3 states that a Class 2 rest facility must, among other things, be ''separated from passengers by a minimum of a curtain to provide darkness and some sound mitigation.'' If a rest facility does not have a functional privacy curtain (or something similar) then, if it does not satisfy the MEL provisions of § 121.628, that rest facility would not meet the requirements for a Class 2 rest facility. That rest facility may, however, meet the requirements for a Class 3 rest facility.

J. Flight Duty Period Extensions

i. Determining Whether Pre or Post-Takeoff FDP Extension Applies

SWAPA asked whether the final check for a pre-takeoff FDP extension is done prior to takeoff. SWAPA provided an example in which after taxiing but before takeoff a flightcrew member realizes that he/she will exceed the limit of Table B or C by over two hours. SWAPA asked whether the flightcrew member in that example must return to the gate instead of taking off.

ALPA provided a scenario in which an FDP is scheduled near the FDP limit and the destination airport is forecast to be influenced by a typhoon. In that scenario, the certificate holder elects, before takeoff, to operate the flight as originally scheduled while simultaneously planning with a high degree of confidence for a diversion that would exceed the pertinent FDP limit. ALPA asked whether the certificate holder in this situation would be allowed to use the post-takeoff FDP extension.

Section 117.19 provides for two ways to extend a flightcrew member's FDP: (1) A pre-takeoff FDP extension, and (2) a post-takeoff FDP extension. The post-takeoff FDP extension applies to an FDP in which a situation arises after takeoff that would cause a flightcrew member to exceed the pertinent FDP limit. This type of extension is more generous than a pre-takeoff FDP extension because once an airplane is in the air, ''the certificate holder and pilot in command have very little discretion concerning FDPs and flight time limits,'' as they cannot change the flightcrew while the plane is in the air.[33]

For situations that are known before takeoff, the more stringent pre-takeoff FDP extensions can be utilized. That is because the certificate holder and pilot in command have more options for dealing with unexpected situations that arise while the plane is still on the ground. Thus, the distinction between pre- and post-takeoff FDP extensions comes from determining whether the flightcrew member and certificate holder had a reasonable expectation before takeoff that the flight segment would be completed within the pertinent FDP limit.

In SWAPA's example a flightcrew member realizes after taxi out but before takeoff that he will exceed the pertinent FDP limit by over two hours. In order for this flightcrew member to extend his FDP, he would need to use the pre-takeoff FDP extension because the plane was not airborne at the time that the flightcrew member realized that he would exceed the pertinent FDP limit. Since the pre-takeoff FDP extension is limited to two hours, the flightcrew member in SWAPA's example would be unable to commence a segment that exceeds his FDP limit by over two hours.

Turning to ALPA's example, the certificate holder has a high degree of confidence, before takeoff, that the destination airport will be hit by a typhoon. As discussed above, in order to utilize the post-takeoff FDP extension, the flightcrew and certificate holder have to have a reasonable expectation, prior to takeoff, that they will complete the flight segment within the pertinent FDP limit. Because the certificate holder in this example has a high degree of confidence that the destination airport will be hit by a typhoon, that certificate holder does not have a reasonable expectation that the flight segment will be completed as scheduled. Accordingly, the certificate holder would need to utilize a pre-takeoff FDP extension in order for the flightcrew in this example to exceed the pertinent FDP limits.

ii. Diversions and FDP Extensions

ALPA posed the following scenario. Unforeseen operational circumstances arise after takeoff that require a diversion to an alternate airport without an exceedance of the pertinent FDP limit. Once at the alternate airport, completion of the FDP to the intended destination will require an FDP extension. ALPA asked whether the post-takeoff FDP extension would apply to this scenario. SWAPA posed an alternative scenario in which the flightcrew members' FDP is extended in-flight by over two hours during the diversion to an alternate airport. In this alternate scenario, SWAPA asked whether the flightcrew would have to immediately enter a rest period upon reaching the alternate airport.

As discussed above, a post-takeoff FDP extension can be taken in response to a situation that arises after takeoff. However, under § 117.19(b)(1), the post-takeoff FDP extension only encompasses the time ''necessary to safely land the aircraft at the next destination airport or alternate airport, as appropriate.'' Thus, the post-takeoff FDP extension terminates once the airplane has landed.

Applying the above discussion to SWAPA's example, a situation arises mid-flight that requires a diversion. The diversion results in a flightcrew member exceeding his FDP limit by over two

[33] 77 FR at 371.

hours. This exceedance is valid under the post-takeoff FDP extension because that extension permits a flightcrew member to finish the flight during which unexpected circumstances arose. However, the extension terminates once the flight lands at the destination or alternate airport. As such, the flightcrew member in SWAPA's example would have to terminate his FDP once he lands at the alternate airport because at that time he would have exceeded the pertinent FDP limit by over two hours and the post-takeoff FDP extension would cease applying once the plane has landed.

Turning to ALPA's example, a flight is diverted but the diversion does not result in exceedance of the pertinent FDP limit. Because the flightcrew member's FDP does not need to be extended during the diversion, there is no need to utilize the post-takeoff FDP extension. Once the plane lands at the alternate airport, the PIC and certificate holder could utilize the pre-takeoff FDP extension to begin a new flight segment and fly the plane from the alternate airport to the destination airport. However, because the pre-takeoff FDP extension is limited to two hours, the certificate holder would be able to use this extension only if the new flight segment could be completed within the FDP-limit+two-hours timeframe.

iii. Exceeding the Cumulative Limits

ALPA posed another scenario in which a flightcrew member's FDP was extended using a post-takeoff FDP extension. ALPA asked whether the post-takeoff FDP extension would extend the flightcrew member's cumulative limits for the duration of the flight or for the entire cumulative period in which the flight took place.

Under § 117.19(b)(3), a post-takeoff FDP extension allows a flightcrew member to exceed the cumulative FDP limits. However, as discussed above, a post-takeoff FDP extension is limited in that it expires once the airplane lands. Once the flight on which the post-takeoff extension was used has been completed, the flightcrew member would again be bound by the cumulative FDP limitations. Thus, the post-takeoff FDP extension allows a flightcrew member to exceed the cumulative FDP limits only to the extent necessary to complete the flight on which the extension is utilized.

iv. *PIC Concurrence in FDP Extension*

ALPA asked whether the PIC needed to concur if the PIC does not need an FDP extension but another flightcrew member needs an FDP extension in order to finish the assigned schedule. ALPA also asked whether the PIC could concur on the condition that only one hour of the two-hour FDP extension is utilized. A4A asked whether carriers could use existing procedures for acknowledging joint responsibility between pilots and carriers for extensions that exceed 30 minutes.

Under § 117.19(a)(1) the ''pilot in command and the certificate holder'' must both concur in order to utilize an FDP extension. Thus, § 117.19(a)(1) requires PIC concurrence for all FDP extensions taken pursuant to § 117.19, even if the PIC is not the flightcrew member who is using the extension. If the PIC believes that the flightcrew is too fatigued for a two-hour FDP extension, the PIC could concur to a shorter FDP extension that he/she believes could safely be carried out by the flightcrew. We also note that, pursuant to § 117.5, each flightcrew member would also have to certify that he/she would not be too fatigued to operate the aircraft during the extension.

A record of PIC concurrence can take any reasonable form as long as there is evidence that the PIC concurred with the extension. For example, the PIC could note his/her concurrence with an FDP extension on a flight release or in an ACARS message.

v. Using Multiple Extensions

A4A, Alaska Air, and AE posed a scenario in which a flightcrew that has already used their over-30-minute FDP extension discovers, after takeoff, that they will need to again extend more than 30 minutes. The commenters asked whether the flightcrew in this scenario would need to divert in order to comply with the pertinent FDP limits.

Under § 117.19(a)(2) and (b)(2), an FDP extension of greater than 30 minutes can only be taken once before a flightcrew member is provided with 30 hours of rest pursuant to § 117.25(b). Thus, the flightcrew and the certificate holder in the above example would be in violation of part 117 if the flightcrew exceeds the pertinent FDP limits. It is irrelevant that the exceedance in this example was caused by unexpected circumstances because, at the time of the exceedance, the flightcrew members had each already used up their one over-30-minutes FDP extension. Accordingly, once a flightcrew member uses up their FDP extension, the FAA strongly recommends that the certificate holder: (1) adds buffers to that crewmember's schedule to account for possible unexpected events; and (2) provides the crewmember with a 30-hour rest period as soon as possible in order to reset the FDP extension.

K. Reserve

i. Airport Reserve

APA asked whether the reserve period has to be physically located on airport property in order to be classified as airport/standby reserve. Horizon, Alaska Air, and RAA asked whether the time a pilot spends in airport reserve is considered FDP if that pilot does not pilot a flight during the reserve period.

Section 117.3 defines airport/standby reserve as a ''duty period during which a flightcrew member is required by a certificate holder *to be at an airport* for a possible assignment.'' (emphasis added). In order to ''be at an airport,'' a flightcrew member would have to be physically located on airport property.

Turning to Horizon, Alaska Air, and RAA's question, § 117.21(b) states that ''[f]or airport/standby reserve, all time spent in a reserve status is part of the flightcrew member's flight duty period.'' Thus, all time that is spent on airport/standby reserve is part of a flightcrew member's FDP regardless of what happens during the airport/standby reserve.

ii. Short-Call Reserve

1. Determining What FDP Limit Applies for Each FDP + Reserve Limit

ALPA and RAA asked at what time does a flightcrew member enter FDP Table B or C in order to determine the FDP + RAP limit. AE asked whether the RAP is associated with each specific crewmember.

The short-call reserve regulations in § 117.21 limit the total number of hours that a flightcrew member on short call reserve may spend in a RAP and an FDP. For an augmented operation, under § 117.21(c)(4), the combined number of hours spent in a RAP and an FDP may not exceed the pertinent FDP limit in Table C plus four hours. For an unaugmented operation, under § 117.21(c)(3), the combined number of hours spent in a RAP and FDP may not exceed the smaller of: (1) Pertinent FDP limit in Table B plus four hours; or (2) 16 hours.[34]

The RAP and RAP + FDP limits, as well as the other limits in § 117.21, apply to each flightcrew member individually. The pertinent FDP limit for the RAP + FDP regulations in § 117.21 is determined using the time at which the FDP begins. The examples below help illustrate how the RAP + FDP limit works.

For the first example, an acclimated flightcrew member begins a RAP at 0600. That flightcrew member is then

[34] This is subject to the FDP extensions specified in § 117.19.

assigned to an unaugmented FDP that begins at 1200 and consists of two flight segments. According to Table B, the FDP limit for a two-segment FDP that begins at 1200 is 13 hours. The applicable 13-hour FDP limit plus 4 hours equals 17 hours. Because this is greater than 16 hours, under § 117.21(c)(3), the pertinent RAP + FDP limit for this unaugmented operation is 16 hours. Given that the flightcrew member in this example began his RAP at 0600, he will have 6 hours of RAP time by the time his FDP will start at 1200. As a result, to stay within the 16-hour RAP + FDP limit, this flightcrew member's FDP cannot exceed 10 hours without an extension, as his RAP will use up 6 hours of the 16-hour RAP + FDP limit.

For the second example, an acclimated flightcrew member begins a RAP at 1100. That flightcrew member is then assigned to an unaugmented FDP consisting of five flight segments that begin at 1500. According to Table B, the FDP limit for a five-segment FDP that begins at 1500 is 11.5 hours. The applicable 11.5-hour FDP limit plus 4 hours equals 15.5 hours. Because this is smaller than 16 hours, under § 117.21(c)(3), the pertinent FDP + RAP limit for this unaugmented operation is 15.5 hours. Since the flightcrew member in this example began his RAP at 1100, he will have 4 hours of RAP time by the time his FDP will start at 1500. Consequently, this flightcrew member can take the full 11.5-hour FDP as the 11.5-hour FDP plus the 4 hours of RAP will not exceed the 15.5-hour RAP + FDP limit.

2. Rest Period Before Being Assigned A RAP

RAA asked whether § 117.21 allows a RAP to be assigned upon completion of a multi-day trip when the flightcrew member still has not reached the FDP limits specified in Table B. To illustrate its question, RAA provided the following scenario. A reserve pilot is assigned a three-day trip. On Day 3, he begins an FDP at 0700, and flies one flight segment until 1430. Upon completion of the one flight segment, the flightcrew member arrives back on base and the carrier assigns him 3 additional flight segments. RAA stated that the revised schedule would not exceed the pertinent FDP or flight time limitations, and it would also not exceed any cumulative limitations. RAA asked whether this schedule would be permissible under § 117.21.

Subsection 117.25(e) prohibits a flightcrew member from beginning a RAP unless that flightcrew member receives 10 hours of rest with an 8-hour sleep opportunity immediately before the RAP. Thus, a flightcrew member cannot begin a RAP immediately after ending an FDP because that flightcrew member would not have received 10 hours of rest immediately before beginning the RAP.

However, as discussed above, the number of flight segments in an FDP can be changed after an FDP begins. Thus, in RAA's example a certificate holder could utilize a flightcrew member's remaining allowable FDP time by adding three more flight segments to the flightcrew member's FDP. However, the FAA emphasizes that: (1) the addition of flight segments to an FDP will require a recalculation of the pertinent FDP limit in Table B using the updated number of flight segments; and (2) the flightcrew member will have to reaffirm his or her fitness for duty before beginning each flight segment.

3. Early Termination of a RAP

APA asked whether a pilot could be released from a RAP early without serving the entire permitted RAP period. APA also asked whether there is a requirement for a pilot in these circumstances to receive a physiological night's rest. RAA provided an example in which a pilot is assigned a RAP of 0700 to 2100. At 0800, the air carrier contacts the pilot and notifies him that his RAP has ended. The carrier then notifies the pilot that he is being given 10 hours of rest, and that he will begin a new RAP at 1800. RAA asks whether the air carrier's actions in this scenario are permissible under part 117.

The regulations in § 117.21 do not prohibit a certificate holder from releasing a flightcrew member from a RAP early. Thus, a flightcrew member completes a RAP once he or she has been released from that RAP by the certificate holder. However, once the flightcrew member is released from a RAP, § 117.25(e) requires that the flightcrew member be provided with 10 hours of rest that include 8 uninterrupted hours of sleep opportunity before the flightcrew member begins a new RAP. Section 117.25 does not require that this rest period be provided during a physiological night. Thus, RAA's example in which a certificate holder terminates a RAP early and then provides the flightcrew member with 10 hours of rest would be permissible under § 117.21 and § 117.25 because the certificate holder in that example would provide a legal rest period between two RAPs.

4. Additional Questions

APA provided a scenario in which a pilot is assigned to a RAP. After 3 hours of being on-call during the RAP, the pilot is contacted to report for an FDP of 10 hours, all of which is in compliance with the pertinent provisions of part 117. APA asked how much of this time would count toward the cumulative FDP limitation of 60 hours in a 168-hour period. APA also asked whether this answer would change if the FDP was assigned during airport reserve instead of short-call reserve.

Short-call reserve consists of: (1) a RAP, and (2) an FDP if the FDP is assigned during the reserve. The RAP is not part of an FDP, and as such, the time spent on an FDP is the only aspect of short-call reserve that is counted toward the cumulative FDP limits. Thus, the 10 hours that the pilot in APA's example spent on an FDP would count toward the cumulative FDP limits while the 3-hours that pilot spent on a RAP would not count toward those limits.

This situation would change if the pilot was to be assigned to airport/standby reserve instead of short-call reserve. Under § 117.21(b), the entire time that is spent in airport/standby reserve is considered to be FDP. Thus, if the pilot in APA's example was to be assigned to airport/standby reserve, the entire 13 hours that he spends on reserve would be counted toward the cumulative FDP limits, as well as the daily FDP limits.

iii. Long-Call Reserve

ALPA asked a number of questions about long-call reserve. First, ALPA asked whether, for long-call reserve that operates into the WOCL, the regulations require 12 hours of notice before beginning the FDP or 12 hours of rest. Second, ALPA also asked whether the 12-hour notice is required for an FDP that starts during the WOCL. Third, ALPA asked whether the WOCL is determined using local time or last-acclimated time. Finally, ALPA asked whether this same 12-hour-notice requirement applied to short-call reserve.

For long-call reserve, § 117.21(d) requires that flightcrew members assigned to an FDP ''that will begin before and operate into the flightcrew member's window of circadian low * * * must receive a 12 hour notice of report time from the certificate holder.'' Because this regulatory text specifies a ''notice of report time'' and does not set out any rest requirements, § 117.21(d) only requires a 12-hour notice and not

a 12-hour rest period for long-call reserve that operates into the WOCL.

In addition, the 12-hour notice requirement is only applicable to FDPs that ''begin before and operate into'' the WOCL. Thus, this requirement would not apply to an FDP that begins during the WOCL, as that FDP would not begin before the WOCL. The time zone from the flightcrew member's last-acclimated theater is used to determine the WOCL period. This is because part 117 explicitly states when local time is to be used instead of last-acclimated time,[35] and § 117.21(d) does not instruct the certificate holder to use local time. Finally, the 12-hour notice requirement does not apply to short-call reserve because the requirements of § 117.21(d) apply only to long-call reserve.

L. Cumulative Limitations

A4A and ALPA asked whether the flight time and FDP cumulative limits were hard limits or whether they could be extended under certain circumstances. ALPA provided the following example. The return segment of a trans-oceanic flight is scheduled within all FDP and flight-time limits. Due to unforeseen circumstances, the flight holds for an extended period and then diverts to an alternate airport. In order to begin a new flight segment from the alternate airport and complete the original schedule, one of the flightcrew members would have to exceed one of the cumulative flight time or FDP limits. ALPA asked whether the flightcrew member would be allowed to exceed the cumulative FDP limitations in this case.

The cumulative FDP and flight time limits of part 117 are set out in § 117.23. While these are generally hard limits, they can be extended in certain circumstances. For example, a post-takeoff FDP extension taken under § 117.19(b)(3) would be permitted to exceed the cumulative limits of § 117.23 and the flight-time limits of § 117.11 while a pre-takeoff FDP extension would not be permitted to exceed those limits.[36]

In ALPA's example a flightcrew member who is at an alternate airport seeks to begin a new flight segment that would exceed the cumulative FDP limits. Because that flightcrew member knows before takeoff that he will exceed the pertinent limits, he cannot utilize the post-takeoff FDP extension. Since the pre-takeoff FDP extension does not allow a flightcrew member to exceed the cumulative FDP limits, the flightcrew member in ALPA's example would not be allowed to begin a new flight segment from the alternate airport.

M. Rest Period

i. Sleep Opportunity

1. Definition of Sleep Opportunity

APA asked the FAA to define ''uninterrupted sleep opportunity.'' APA also asked whether the sleep opportunity has to take place at a specific location, such as the flightcrew member's home.

Subsection 117.25(e) requires a certificate holder to provide a flightcrew member with 10 hours of rest that includes an 8-hour uninterrupted sleep opportunity immediately before the flightcrew member begins a reserve or FDP. Subsection 117.25(f) requires the flightcrew member to notify the certificate holder if he or she determines that his/her rest period will not provide an 8-hour uninterrupted sleep opportunity.

A sleep opportunity generally commences once a flightcrew member is at a location where the flightcrew member can reasonably be expected to go to sleep and not have that sleep interrupted. The sleep opportunity does not need to take place at the flightcrew member's home, but it must take place at a location where the flightcrew member can reasonably expect to obtain 8 hours of uninterrupted sleep. In addition, as the FAA pointed out in the preamble to final rule, specific sleep situations ''are difficult to capture in a regulatory standard.''[37] That is why § 117.25(f) requires the flightcrew member to notify the certificate holder if the flightcrew member determines that he or she cannot get the requisite amount of uninterrupted sleep.

2. Interruptions to the Sleep Opportunity That Are Not Caused by Carrier

A4A, APA, and AE asked whether an interruption not from the air carrier, such as a hotel fire alarm, would interrupt the 8-hour sleep opportunity. A4A and AE asked whether the flightcrew member is required to inform the carrier if a sleep opportunity has been interrupted.

Subsection 117.25(f) requires a flightcrew member to notify the air carrier if the flightcrew member determines that his/her rest period will not provide 8 hours of uninterrupted sleep. This section provides the flightcrew member with discretion to determine whether his or her sleep has been interrupted. However, if the flightcrew member determines that his/her sleep has been interrupted, then the flightcrew member must notify the air carrier of the interruption. For this determination, it is irrelevant whether the interruption to the flightcrew member's sleep was caused by the air carrier.

Taking the fire alarm example, if the fire alarm sounds for only a few seconds, some flightcrew members may have no problem getting back to sleep, and they may determine that their sleep was not interrupted. Conversely, other flightcrew members may find it difficult to get back to sleep even if their sleep was interrupted for only a short period of time. These flightcrew members may determine that their sleep opportunity was interrupted, at which point they would have to notify the carrier of the interruption.

ii. Requirement To Perform a Task During a Rest Period

A4A and ALPA asked whether carriers could require a pilot to check a calendar, text, or email during a rest period. AE asked whether a pilot could check the schedule/calendar voluntarily during a rest period.

During a rest period, a crewmember must be free from all restraint by the certificate holder.[38] If a crewmember is required to do something by the certificate holder, then that crewmember is not free from all restraint, and that crewmember is not on a valid rest period. Accordingly, a certificate holder cannot require a flightcrew member to perform any tasks during a rest period, including tasks such as checking the schedule/calendar, checking a text message, or checking an email message.

However, if a flightcrew member performs a task of his/her own volition without being required to perform the task by the certificate holder, then that task is not a restraint imposed by the certificate holder. Thus, it is permissible for a flightcrew member to voluntarily decide to check the schedule/calendar during his or her rest period. We emphasize, however, that a flightcrew member's decision to perform a task during a rest period must be entirely voluntary.

iii. One-Phone Call Rule

A number of commenters asked whether the required 8-hour sleep opportunity eliminates the one-phone-call rule or places additional restrictions on when the phone call can be made. ALPA asked whether a flightcrew member is required to notify the

[35] *See, e.g.,* § 117.15(a).

[36] *See* § 117.19(a)(3).

[37] 77 FR at 383.

[38] Letter to Glenn Jimenez from Rebecca MacPherson (June 9, 2011).

certificate holder if the certificate holder's phone call prevents the flightcrew member from receiving an 8-hour sleep opportunity.

The FAA has a ''one phone call'' policy that ''generally allows a certificate holder to initiate one phone call during [a] crewmember's rest period.''[39] If the crewmember voluntarily chooses to answer this phone call, then the FAA does not view the call as disruptive and breaking the rest period.[40] The sleep-opportunity requirements of § 117.25 do not eliminate this policy. However, the FAA cautions that a flightcrew member may have difficulty getting back to sleep after being woken up by a certificate holder's phone call. In that situation, a flightcrew member may notify the certificate holder, pursuant to § 117.25(f), that his or her sleep opportunity has been interrupted. Thus, a certificate holder runs the risk of interrupting a flightcrew member's sleep opportunity if the certificate holder calls a flightcrew member during the flightcrew member's rest period.

iv. Point of Reference for the 30-Hour Rest Period

An individual commenter asked whether the point of reference for the 168-hour period specified in § 117.25(b) was the beginning of an FDP or the end of an FDP.

Subsection 117.25(b) originally stated that ''[b]efore beginning any reserve or flight duty period a flightcrew member must be given at least 30 consecutive hours free from all duty in any 168 consecutive hour period.'' In May 2012, the FAA issued a correction, changing the regulatory text of this subsection to require 30 hours free from all duty ''within the past 168 consecutive hour period.''[41] The FAA's correction explained that this change was made ''to clarify that the '168 consecutive hour period' is the period that precedes the beginning of the flight duty period.''[42] Thus, the point of reference for the 168-hour period specified in § 117.25(b) is the beginning of an FDP.

v. Prospective Identification of a Rest Period

APA asked whether the 30-hour rest period in § 117.25(b) has to be prospectively identified. More specifically, APA asked whether a rest period that is scheduled for less than 30 hours can be extended to 30 hours to satisfy the requirements of § 117.25(b).

A rest period must be prospective in nature, which means that a flightcrew member must be told in advance that he or she will be on a rest period for a specified duration. This is so that a flightcrew member has an opportunity to plan out his or her rest period in order to maximize the sleep opportunities available during that rest period.

In this case § 117.25(b) requires that a flightcrew member be provided with a 30-consecutive-hour rest period in the 168-hour period immediately preceding an FDP. Because a flightcrew member would need to plan ahead in order to maximize the multiple sleep opportunities available during this 30-hour rest period, the flightcrew member must be told before the rest period begins that he/she will be receiving 30 hours of rest in order for that rest to satisfy § 117.25(b). The FAA notes that this approach is consistent with a 1991 interpretation in which the FAA stated that a pertinent rest period had to be identified in advance as a 24-hour rest period in order for that rest period to satisfy a regulation requiring 24 hours of rest.[43]

vi. Assigning an FDP

A4A and Alaska Air asked whether a rest period that is longer than the regulatory minimum could be terminated early if the resulting rest satisfied the minimum regulatory requirements. ALPA asked whether an air carrier could contact a flightcrew member when the flightcrew member is off duty but not on a rest period to give a flight assignment. If so, ALPA questioned whether the carrier must provide at least 10 hours of rest prior to the flight assignment. ALPA also asked whether a flightcrew member could voluntarily elect to ''pick up a trip'' from open time if he or she will have the requisite rest prior to the report time for that trip.

As discussed above, the start of a previously-scheduled FDP can only be changed by utilizing the reserve provisions of § 117.21. As such, a certificate holder that wishes to bump up the time of a previously-scheduled FDP would have to provide the flightcrew member with the pertinent long-call-reserve notice of the FDP change. Alternatively, if a certificate holder anticipates that it may need to call in a flightcrew member for an FDP, then that certificate holder should provide the flightcrew member with the required 10-hour rest period and then place the flightcrew member on short-call reserve.

These circumstances change if a flightcrew member decides, on his/her own initiative, to pick up a trip from open time, as the regulations do not prohibit this practice as long as the flightcrew member has received the required rest. However, the FAA cautions flightcrew members that § 117.5(a) requires a flightcrew member to ''report for any flight duty period rested and prepared to perform his or her assigned duties.'' The preamble to the final rule explains that this provision was added to the regulations to, among other things, ''discourage flightcrew-member practices such as picking up extra hours.''[44] Thus, while a flightcrew member is free to voluntarily pick up extra flight hours from open time, the flightcrew member may be in violation of § 117.5(a) if this activity results in the flightcrew member becoming unduly fatigued.

Turning to ALPA's other question, if a flightcrew member is not on a rest period, the certificate holder may contact the flightcrew member to schedule a flight assignment.[45] However, pursuant to § 117.25(b) and (e), the certificate holder would then need to provide that flightcrew member with the requisite rest period prior to beginning the FDP. The certificate holder would also have to follow the FDP notification requirements of long-call reserve, as this type of contact and FDP assignment would qualify as long-call reserve pursuant to the definition of that term in § 117.3.

vii. Requirements of § 117.25(d)

A4A and AE asked whether § 117.25(d) requires 60 degrees of travel in one direction and 168 consecutive hours away from the flightcrew member's home base together to trigger the 56 consecutive hours of rest requirement. ALPA asked whether the rest requirement of § 117.25(d) would trigger if a flightcrew member never enters a new theater. ALPA also provided an example in which a flightcrew member flies a series of two 144-hour time-away-from-base trips which are separated by a 10-hour rest period at home base. ALPA asked whether this situation would trigger the 56-hour rest requirement of § 117.25(d).

Subsection 117.25(d) requires that a flightcrew member be given a minimum of 56 consecutive hours of rest upon return to home base if that flightcrew

[39] *Id.*

[40] *Id.*

[41] 77 FR 28763, 28764 (May 16, 2012).

[42] *Id.* at 28763.

[43] Letter to B. Stephen Fortenberry from Donald P. Byrne (June 24, 1991).

[44] 77 FR at 348.

[45] This answer assumes that the flightcrew member is not on short-call or airport/standby reserve at the time of the contact.

member has been away from home base for more than 168 consecutive hours as part of an FDP or series of FDPs that required that flightcrew member to travel more than 60 degrees longitude.[46] Thus, in order to trigger the 56-hour rest requirement of § 117.25(d), a flightcrew member must satisfy both of the following requirements: (1) The flightcrew member has to be away from home base for over 168 consecutive hours; and (2) the time away from home base must take place during FDP(s) that require the flightcrew member to travel over 60 degrees longitude.

The requirement to travel over 60 degrees longitude refers to travel in a single direction, as a flightcrew member who travels 30 degrees in one direction and then 30 degrees back would wind up in the same place where he started. Because this requirement does not refer to theaters, it is irrelevant whether a flightcrew member changes theaters during his/her FDP(s)—all that matters is whether the flightcrew member has traveled more than 60 degrees longitude in one direction away from home base.

Turning to ALPA's example, in that example, a flightcrew member goes on two trips each of which requires him to spend 144 hours away from home base and has a rest period at home base between the trips. Because each trip does not exceed 168 hours away from home base, each of these trips is insufficient to trigger the rest requirement of § 117.25(d). In addition, it is important to note that a flightcrew member must be away from home base for more than 168 ''consecutive'' hours in order to trigger the rest requirement in § 117.25(d). Because the two trips in ALPA's example were separated by a rest period at home base, the time away from home for these two trips cannot be combined for § 117.25(d) purposes, as that time away from home was not consecutive. Thus, ALPA's example would not trigger the rest requirements of § 117.25(d), as the flightcrew member in that example would not spend over 168 consecutive hours away from home base. It would, however trigger the 30-hour consecutive-rest requirement of § 117.25(b) once the flightcrew member reached 168 hours.

viii. Deadheading

The National Air Carrier Association (NACA) asked how the compensatory rest for deadheading is calculated if the deadhead has multiple legs with a sleep/rest opportunity between deadhead segments. RAA and AE provided the following scenario. A flightcrew member reports for duty at 0430 and operates a single flight that blocks in at 0800. At 1100 he starts to deadhead to another city to fly the next day and the series of deadhead flights arrives at 1530. RAA and AE asked how much rest this flightcrew member would need. RAA also asked how much rest this flightcrew member would need if this entire assignment had consisted solely of deadhead transportation.

Subsection 117.25(g) states that ''[i]f a flightcrew member engaged in deadhead transportation exceeds the applicable flight duty period in Table B of this part, the flightcrew member must be given a rest period equal to the length of the deadhead transportation'' but not less than the 10-hour rest period required by § 117.25(e). Because Table B is used to calculate FDPs, the total length of the deadhead is determined in a similar manner as the total length of an FDP. More specifically, flight segments that are not separated by a ''required intervening rest period''[47] would be considered part of the same deadhead. As discussed above, a ''required intervening rest period'' refers to a rest period specified by § 117.25. Thus, two deadhead segments that are separated by a five-hour rest period would be considered a single deadhead period because five hours is not a required intervening rest period. Conversely, two deadhead segments separated by 10 hours of rest with an 8-hour sleep opportunity would constitute two separate deadhead periods, as they would be separated by a required intervening rest period.

Turning to RAA and AE's scenario, a flightcrew member reports for a one-segment FDP at 0430 and flies a single flight segment that concludes at 0800. The FAA will assume that this flightcrew member is acclimated. Because the flightcrew member concludes his one flight segment at 0800, his FDP terminates at that time. Then, at 1100, the flightcrew member begins a series of deadhead flights that terminate at 1530. This deadhead assignment consists of 4.5 hours (the time from 1100 to 1530). While RAA and AE have not specified how many flight segments make up this deadhead assignment, the 4.5 hours of this assignment would be well within the bounds of any of the FDP limits in Table B. Because this deadhead assignment has not exceeded the pertinent FDP limits of Table B, § 117.25(g) would not require a compensatory rest period in this case.

If the entire assignment in RAA and AE's scenario consisted of deadhead transportation, then the total amount of deadhead transportation, which would take place from 0430 to 1530, would be 11 hours. This would exceed the pertinent limits of Table B, as the highest FDP limit for an FDP that begins at 0430 is 10 hours. Accordingly, § 117.25(g) would require a compensatory rest period equal to the length of the deadhead transportation before the flightcrew member begins a new FDP. In this case, the length of the compensatory rest period would be 11 hours.

N. Consecutive Nighttime Operations

i. Applicability to Augmented Operations

A4A asked whether the consecutive-night-provisions of § 117.27 apply to augmented operations.

Section 117.27 requires that a flightcrew member be provided with a two-hour mid-duty rest break during each consecutive FDP that infringes on the WOCL in order for that flightcrew member to be scheduled for more than three consecutive nighttime FDPs. The preamble to the final rule rejected a commenter's suggestion to exempt augmented operations from this provision.[48] The preamble explained this decision by pointing out that augmented operations need the mitigation provided by nighttime mid-duty breaks to the same extent as unaugmented operations.[49] Accordingly, the consecutive-night provisions of § 117.27 apply to augmented operations that infringe on the WOCL.

ii. Applicability to FDPs That Begin During the WOCL

A4A, Jeppesen, and Alaska Air asked whether an FDP that begins during the WOCL infringes on the WOCL for purposes of § 117.27.

As discussed above, § 117.27 prohibits a flightcrew member from accepting and a certificate holder from scheduling five consecutive FDPs ''that infringe on the window of circadian low'' if the flightcrew member assigned to these FDPs does not receive mid-duty rest periods that are specified in § 117.27. In the preamble to the final rule, the FAA explained that ''[t]he consecutive-night limit is intended to apply to FDPs that infringe on the WOCL because operations conducted during the WOCL significantly increase cumulative fatigue.''[50] Accordingly, an

[46] *See* 77 FR at 383 (explaining § 117.25(d)). The FAA intends to issue a correction clarifying the regulatory language in § 117.25(d).

[47] *See* § 117.3 (FDP definition).

[48] 77 FR at 376.

[49] *Id.*

[50] *Id.* at 376.

FDP ''infringe[s] on the window of circadian low'' for the purposes of § 117.27 if any portion of that FDP takes place during the WOCL.

Thus, an operation that begins during the WOCL would ''infringe on the window of circadian low'' and be subject to § 117.27 because a portion of that operation would be conducted during the WOCL. An operation that remains entirely free of the WOCL would not ''infringe on the window of circadian low'' for the purposes of § 117.27 because no portion of that operation would be conducted during the WOCL.

iii. How Often the Mid-Duty Break Must Be Provided

ALPA asked whether the two-hour mid duty rest break must be given on the day a pilot first reports for duty if he or she is scheduled for five days of flight that infringe on the WOCL.

Section 117.27 requires that, in order to exceed three consecutive nighttime FDPs, the two-hour mid-duty rest break be given ''during each of the consecutive nighttime duty periods'' that infringe on the WOCL. Accordingly, if a pilot is scheduled for five consecutive FDPs that infringe on the WOCL, that pilot must be provided with a two-hour mid-duty break during each of those FDPs. This would include the first FDP in the series that infringes on the WOCL.

iv. Whether Reserve Triggers § 117.27

SWAPA asked whether a RAP that infringes on the WOCL would trigger the requirements of § 117.27. Horizon and RAA asked whether a pilot can be scheduled for more than 3 consecutive airport reserve periods that infringe on the WOCL.

Section 117.27 only applies to ''flight duty periods that infringe on the window of circadian low.'' Because a reserve availability period is not a flight duty period, a RAP does not trigger the requirements of § 117.27. However, if a flightcrew member on short-call reserve is assigned an FDP at least a portion of which takes place during the WOCL, that FDP would infringe on the WOCL for purposes of § 117.27.

Turning to airport/standby reserve, § 117.21(a) states that ''[f]or airport/standby reserve, all time spent in a reserve status is part of the flightcrew member's flight duty period.'' Because time spent in airport/standby reserve is considered to be part of an FDP, consecutive airport reserve periods that infringe on the WOCL would trigger the requirements of § 117.27.

O. Applicability to Flight Attendants

Alaska Air asked whether flight attendants operating under part 117 must comply with the fatigue education and awareness training program provisions of § 117.9. Alaska Air also asked whether these flight attendants must declare their fitness for duty pursuant to the provisions of § 117.5.

If a flight attendant operates under part 117, that flight attendant must comply with the provisions of part 117 that apply to flightcrew members. Flightcrew members are required to declare their fitness for duty pursuant to § 117.5(d) and go through fatigue education and awareness training pursuant to § 117.9. Accordingly, these requirements would also extend to flight attendants operating under part 117.

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

Mark Bury,

Acting Assistant Chief Counsel for International Law, Legislation, and Regulations Division, AGC–200.

[FR Doc. 2013–05083 Filed 3–4–13; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 201

[Release Nos. 33–9387; 34–68994; IA–3557; IC–30408]

Adjustments to Civil Monetary Penalty Amounts

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: This rule implements the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996. The Commission is adopting a rule adjusting for inflation the maximum amount of civil monetary penalties under the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, the Investment Advisers Act of 1940, and certain penalties under the Sarbanes-Oxley Act of 2002.

DATES: *Effective Date:* March 5, 2013.

FOR FURTHER INFORMATION CONTACT: James A. Cappoli, Senior Special Counsel, Office of the General Counsel, at (202) 551–7923, or Miles S. Treakle, Senior Counsel, Office of the General Counsel, at (202) 551–3609.

SUPPLEMENTARY INFORMATION:

I. Background

This rule implements the Debt Collection Improvement Act of 1996 (''DCIA'').[1] The DCIA amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (''FCPIAA'')[2] to require each federal agency to adopt regulations at least once every four years that adjust for inflation the maximum amount of the civil monetary penalties (''CMPs'') under the statutes administered by the agency.[3]

A civil monetary penalty (''CMP'') is defined in relevant part as any penalty, fine, or other sanction that: (1) Is for a specific amount, or has a maximum amount, as provided by federal law; and (2) is assessed or enforced by an agency in an administrative proceeding or by a federal court pursuant to federal law.[4] This definition covers the monetary penalty provisions contained in the statutes administered by the Commission. In addition, this definition encompasses the civil monetary penalties that may be imposed by the Public Company Accounting Oversight Board (the ''PCAOB'') in its disciplinary proceedings pursuant to 15 U.S.C. 7215(c)(4)(D).[5]

The DCIA requires that the penalties be adjusted by the cost-of-living adjustment set forth in Section 5 of the FCPIAA.[6] The cost-of-living adjustment is defined in the FCPIAA as the percentage by which the U.S. Department of Labor's Consumer Price Index for all-urban consumers (''CPI–U'')[7] for the month of June for the year preceding the adjustment exceeds the CPI–U for the month of June for the year in which the amount of the penalty was last set or adjusted pursuant to law.[8] The statute contains specific rules for rounding each increase based on the size of the penalty.[9] Agencies do not have discretion over whether to adjust a maximum CMP, or the method used

[1] Public Law 104–134, 110 Stat. 1321–373 (1996) (codified at 28 U.S.C. 2461 note).

[2] 28 U.S.C. 2461 note.

[3] Increased CMPs apply only to violations that occur after the increase takes effect.

[4] 28 U.S.C. 2461 note (3)(2).

[5] The Commission may by order affirm, modify, remand, or set aside sanctions, including civil monetary penalties, imposed by the PCAOB. *See* Section 107(c) of the Sarbanes-Oxley Act of 2002, 15 U.S.C. 7217. The Commission may enforce such orders in federal district court pursuant to Section 21(e) of the Securities Exchange Act of 1934. As a result, penalties assessed by the PCAOB in its disciplinary proceedings are penalties ''enforced'' by the Commission for purposes of the Act. *See Adjustments to Civil Monetary Penalty Amounts,* Release No. 33–8530 (Feb. 4, 2005) [70 FR 7606 (Feb. 14, 2005)].

[6] 28 U.S.C. 2461 note (5).

[7] 28 U.S.C. 2461 note (3)(3).

[8] 28 U.S.C. 2461 note (5)(b).

[9] 28 U.S.C. 2461 note (5)(a)(1)–(6).

to determine the adjustment. Although the DCIA imposes a 10 percent maximum increase for each penalty for the first adjustment pursuant thereto, that limitation does not apply to subsequent adjustments.

The Commission administers four statutes that provide for civil monetary penalties: The Securities Act of 1933; the Securities Exchange Act of 1934; the Investment Company Act of 1940; and the Investment Advisers Act of 1940. In addition, the Sarbanes-Oxley Act of 2002 provides the PCAOB (over which the Commission has jurisdiction) authority to levy civil monetary penalties in its disciplinary proceedings.[10] Penalties administered by the Commission were last adjusted by rules effective March 3, 2009.[11] The DCIA requires the civil monetary penalties to be adjusted for inflation at least once every four years. The Commission is therefore obligated by statute to increase the maximum amount of each penalty by the appropriate formulated amount.

Accordingly, the Commission is adopting an amendment to 17 CFR part 201 to add § 201.1005 and Table V to Subpart E, increasing the amount of each civil monetary penalty authorized by the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, the Investment Advisers Act of 1940, and certain penalties under the Sarbanes-Oxley Act of 2002.[12] The adjustments set forth in the amendment apply to violations occurring after the effective date of the amendment.

II. Summary of the Calculation

To explain the inflation adjustment calculation for CMP amounts that were last adjusted in 2009, we will use the following example. Under the current provisions, the Commission may impose a maximum CMP of $1,425,000 for certain insider trading violations by a controlling person. To determine the new CMP amounts under the amendment, first we determine the appropriate CPI–U for June of the calendar year preceding the year of adjustment. Because we are adjusting CMPs in 2013, we use the CPI–U for June of 2012, which was 229.478. We must also determine the CPI–U for June of the year the CMP was last adjusted for inflation. Because the Commission last adjusted this CMP in 2009, we use the CPI–U for June of 2009, which was 215.693.

Second, we calculate the cost-of-living adjustment or inflation factor. To do this we divide the CPI for June of 2012 (229.478) by the CPI for June of 2009 (215.693). Our result is 1.0639.

Third, we calculate the raw inflation adjustment (the inflation adjustment before rounding). To do this, we multiply the maximum penalty amounts by the inflation factor. In our example, $1,425,000 multiplied by the inflation factor of 1.0639 equals $1,516,058.

Fourth, we round the raw inflation amounts according to the rounding rules in Section 5(a) of the FCPIAA. Since we round only the increase amount, we calculate the increased amount by subtracting the current maximum penalty amounts from the raw maximum inflation adjustments. Accordingly, the increase amount for the maximum penalty in our example is $91,072 (*i.e.,* $1,516,058 less $1,425,000). Under the rounding rules, if the *penalty* is greater than $200,000, we round the *increase* to the nearest multiple of $25,000. Therefore, the maximum penalty increase in our example is $100,000.

Fifth, we add the rounded increase to the maximum penalty amount last set or adjusted. In our example, $1,425,000 plus $100,000 yields a maximum inflation adjustment penalty amount of $1,525,000.[13]

III. Related Matters

Administrative Procedure Act—Immediate Effectiveness of Final Rule

Under the Administrative Procedure Act (''APA''), a final rule may be issued without public notice and comment if the agency finds good cause that notice and comment are impractical, unnecessary, or contrary to public interest.[14] Because the Commission is required by statute to adjust the civil monetary penalties within its jurisdiction by the cost-of-living adjustment formula set forth in Section 5 of the FCPIAA, the Commission finds that good cause exists to dispense with public notice and comment pursuant to the notice and comment provisions of the APA.[15] Specifically, the Commission finds that because the adjustment is mandated by Congress and does not involve the exercise of Commission discretion or any policy judgments, public notice and comment is unnecessary.[16]

Under the DCIA, agencies must make the required inflation adjustment to civil monetary penalties: (1) According to a very specific formula in the statute; and (2) within four years of the last inflation adjustment. Agencies have no discretion as to the amount of the adjustment and have limited discretion as to the timing of the adjustment, in that agencies are required to make the adjustment at least once every four years. The regulation discussed herein is ministerial, technical, and noncontroversial. Furthermore, because the regulation concerns penalties for conduct that is already illegal under existing law, there is no need for affected parties to have thirty days prior to the effectiveness of the regulation and amendments to adjust their conduct. Accordingly, the Commission believes that there is good cause to make this regulation effective immediately upon publication.[17]

A. Economic Analysis

The Commission is sensitive to the costs and benefits that result from its rules. This regulation merely adjusts civil monetary penalties in accordance with inflation as required by the DCIA, and has no impact on disclosure or compliance costs. The Commission notes that the civil monetary penalties ordered in SEC proceedings in fiscal year 2012 totaled approximately $1,021.0 million. Assuming that the Commission is successful in obtaining civil monetary penalties in fiscal years subsequent to the enactment of the new regulation in similar proportion to that obtained in fiscal year 2012, the inflationary adjustment pursuant to the new regulation would result in a maximum increase in the civil monetary penalties ordered of approximately 6.4%, or $65.3 million. This figure assumes that the Commission would obtain a civil monetary penalty equal to the maximum statutory amount in each

[10] 15 U.S.C. 7215(c)(4)(D).

[11] *See* 17 CFR 201.1004.

[12] The Commission also is adopting technical corrections to Table I, Table II, Table III, and Table IV of 17 CFR Part 201. 17 CFR 201.1001–1004. Each of these tables referenced 15 U.S.C. 78ff(c)(2)(C), rather than 15 U.S.C. 78ff(c)(2)(B). The technical corrections will amend each table to refer to the correct paragraph.

[13] The adjustments in Table V to Subpart E of Part 201 reflect that the operation of the statutorily mandated computation, together with rounding rules, does not result in any adjustment to ten penalties. These particular penalties will be subject to slightly different treatment when calculating the next adjustment. Under the statute, when we next adjust these penalties, we will be required to use the CPI–U for June of the year when these particular penalties were ''last adjusted,'' rather than the CPI–U for 2013.

[14] 5 U.S.C. 553(b)(3)(B).

[15] 5 U.S.C. 553(b)(3)(B).

[16] A regulatory flexibility analysis under the Regulatory Flexibility Act (''RFA'') is required only when an agency must publish a general notice of proposed rulemaking for notice and comment. *See* 5 U.S.C. 603. As noted above, notice and comment are not required for this final rule. Therefore, the RFA does not apply.

[17] Additionally, this finding satisfies the requirements for immediate effectiveness under the Small Business Regulatory Enforcement Fairness Act. *See* 5 U.S.C. 808(2); *see also id.* 801(a)(4).

case, which clearly overstates the effect of the adjustment to the penalties. The Commission further notes that, in many cases in which it has obtained large civil monetary penalties, such penalties were calculated on the basis of the gross pecuniary gain rather than the maximum penalty dollar amount set by statute that will be adjusted by this rule.[18] In addition, the Commission notes that this figure includes penalties imposed for insider trading, for which the statutory maximum is stated as an amount not to exceed three times the profit gained or loss avoided as a result of the violation, rather than by reference to a statutory dollar amount that is affected by this regulation.[19] Therefore, the Commission does not believe that adjusting civil monetary penalties will significantly affect the amount of penalties it obtains.

The benefit provided by the inflationary adjustment to the maximum civil monetary penalties is that of maintaining the level of deterrence effectuated by the civil monetary penalties, and not allowing such deterrent effect to be diminished by inflation. The costs of implementing this rule should be negligible, because the only change from the current, baseline situation is determining potential penalties using a new maximum dollar amount. Furthermore, Congress, in mandating the inflationary adjustments, has already determined that any possible increase in costs is justified by the overall benefits of such adjustments.

B. Paperwork Reduction Act

This rule does not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995 as amended.[20]

C. Statutory Basis

The Commission is adopting these amendments to 17 CFR Part 201, Subpart E pursuant to the directives and authority of the DCIA, Pub. L. No. 104–134, 110 Stat. 1321–373 (1996).

List of Subjects in 17 CFR Part 201

Administrative practice and procedure, Claims, Confidential business information, Lawyers, Securities.

Text of Amendment

For the reasons set forth in the preamble, part 201, title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 201—RULES OF PRACTICE

Subpart E—Adjustment of Civil Monetary Penalties

■ 1. The authority citation for part 201, Subpart E, continues to read as follows:

Authority: 28 U.S.C. 2461 note.

§ 201.1001 [Amended]

■ 2. Section 201.1001 is amended in Table 1 in the first column labeled ''U.S. code citation'' by removing the reference ''15 U.S.C. 78ff(c)(2)(C) * * *'' and adding in its place ''15 U.S.C. 78ff(c)(2)(B) * * *''.

§ 201.1002 [Amended]

■ 3. Section 201.1002 is amended in Table II in the first column labeled ''U.S. code citation'' by removing the reference ''15 U.S.C. 78ff(c)(2)(C) * * *'' and adding in its place ''15 U.S.C. 78ff(c)(2)(B) * * *''.

§ 201.1003 [Amended]

■ 4. Section 201.1003 is amended in Table III in the first column labeled ''U.S. code citation'' by removing the reference ''15 U.S.C. 78ff(c)(2)(C) * * *.'' and adding in its place ''15 U.S.C. 78ff(c)(2)(B) * * *''.

§ 201.1004 [Amended]

■ 5. Section 201.1004 is amended in Table IV in the first column labeled ''U.S. code citation'' by removing the reference ''15 U.S.C. 78ff(c)(2)(C) * * *'' and adding in its place ''15 U.S.C. 78ff(c)(2)(B) * * *''.

■ 6. Section 201.1005 and Table V to Subpart E are added to read as follows:

§ 201.1005 Adjustment of civil monetary penalties—2013.

As required by the Debt Collection Improvement Act of 1996, the maximum amounts of all civil monetary penalties under the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, the Investment Advisers Act of 1940, and certain penalties under the Sarbanes-Oxley Act of 2002 are adjusted for inflation in accordance with Table V to this subpart. The adjustments set forth in Table V apply to violations occurring after March 5, 2013.

Table V to subpart E	Civil monetary penalty inflation adjustments			
U.S. Code citation	Civil monetary penalty description	Year penalty amount was last adjusted	Maximum penalty amount pursuant to last adjustment	Adjusted maximum penalty amount
Securities and Exchange Commission:				
15 U.S.C. 77h–1(g)	For natural person	2010	$7,500	$7,500
	For any other person	2010	75,000	80,000
	For natural person/fraud	2010	75,000	80,000
	For any other person/fraud	2010	375,000	400,000
	For natural person/substantial losses or risk of losses to others.	2010	150,000	160,000
	For any other person/substantial losses or risk of losses to others.	2010	725,000	775,000
15 U.S.C. 77t(d)	For natural person	2009	7,500	7,500
	For any other person	2009	75,000	80,000
	For natural person/fraud	2009	75,000	80,000
	For any other person/fraud	2009	375,000	400,000
	For natural person/substantial losses or risk of losses to others.	2009	150,000	160,000
	For any other person/substantial losses or risk of losses to others.	2009	725,000	775,000

[18] For example, 15 U.S.C. 77t(d)(2)(A), after adjusting for inflation as required by the DCIA, provides that ''the amount of the penalty shall not exceed the greater of (i) [$7,500] for a natural person or [$80,000] for any other person, or (ii) the gross amount of pecuniary gain to such defendant as a result of the violation.''

[19] 15 U.S.C. 78u–1(a)(2). In fiscal year 2012, penalties imposed under this provision totaled over $140 million.

[20] 44 U.S.C. 3501 *et seq.*

Table V to subpart E	Civil monetary penalty inflation adjustments	Year penalty amount was last adjusted	Maximum penalty amount pursuant to last adjustment	Adjusted maximum penalty amount
U.S. Code citation	Civil monetary penalty description			
15 U.S.C. 78ff(b)	Exchange Act/failure to file information documents, reports.	1996	110	210
15 U.S.C. 78ff(c)(1)(B)	Foreign Corrupt Practices—any issuer	2009	16,000	16,000
15 U.S.C. 78ff(c)(2)(B)	Foreign Corrupt Practices—any agent or stockholder acting on behalf of issuer.	2009	16,000	16,000
15 U.S.C. 78u–1(a)(3)	Insider Trading—controlling person	2009	1,425,000	1,525,000
15 U.S.C. 78u–2	For natural person	2009	7,500	7,500
	For any other person	2009	75,000	80,000
	For natural person/fraud	2009	75,000	80,000
	For any other person/fraud	2009	375,000	400,000
	For natural person/substantial losses to others/gains to self.	2009	150,000	160,000
	For any other person/substantial losses to others/gain to self.	2009	725,000	775,000
15 U.S.C. 78u(d)(3)	For natural person	2009	7,500	7,500
	For any other person	2009	75,000	80,000
	For natural person/fraud	2009	75,000	80,000
	For any other person/fraud	2009	375,000	400,000
	For natural person/substantial losses or risk of losses to others.	2009	150,000	160,000
	For any other person/substantial losses or risk of losses to others.	2009	725,000	775,000
15 U.S.C. 80a–9(d)	For natural person	2009	7,500	7,500
	For any other person	2009	75,000	80,000
	For natural person/fraud	2009	75,000	80,000
	For any other person/fraud	2009	375,000	400,000
	For natural person/substantial losses to others/gains to self.	2009	150,000	160,000
	For any other person/substantial losses to others/gain to self.	2009	725,000	775,000
15 U.S.C. 80a–41(e)	For natural person	2009	7,500	7,500
	For any other person	2009	75,000	80,000
	For natural person/fraud	2009	75,000	80,000
	For any other person/fraud	2009	375,000	400,000
	For natural person/substantial losses or risk of losses to others.	2009	150,000	160,000
	For any other person/substantial losses or risk of losses to others.	2009	725,000	775,000
15 U.S.C. 80b–3(i)	For natural person	2009	7,500	7,500
	For any other person	2009	75,000	80,000
	For natural person/fraud	2009	75,000	80,000
	For any other person/fraud	2009	375,000	400,000
	For natural person/substantial losses to others/gains to self.	2009	150,000	160,000
	For any other person/substantial losses to others/gain to self.	2009	725,000	775,000
15 U.S.C. 80b–9(e)	For natural person	2009	7,500	7,500
	For any other person	2009	75,000	80,000
	For natural person/fraud	2009	75,000	80,000
	For any other person/fraud	2009	375,000	400,000
	For natural person/substantial losses or risk of losses to others.	2009	150,000	160,000
	For any other person/substantial losses or risk of losses to others.	2009	725,000	775,000
15 U.S.C. 7215(c)(4)(D)(i)	For natural person	2009	120,000	130,000
	For any other person	2009	2,375,000	2,525,000
15 U.S.C. 7215(c)(4)(D)(ii)	For natural person	2009	900,000	950,000
	For any other person	2009	17,800,000	18,925,000

Dated: February 27, 2013.
By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–04931 Filed 3–4–13; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 12

[CBP Dec. 13–05]

RIN 1515–AD94

Import Restrictions Imposed on Certain Archaeological Material From Belize

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Final rule.

SUMMARY: This final rule amends the U.S. Customs and Border Protection (CBP) regulations to reflect the imposition of import restrictions on certain archaeological material from Belize. These restrictions are being imposed pursuant to an agreement between the United States and Belize that has been entered into under the authority of the Convention on Cultural Property Implementation Act in accordance with the 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. The final rule amends CBP regulations by adding Belize to the list of countries for which a bilateral agreement has been entered into for imposing cultural property import restrictions. The final rule also contains the designated list that describes the types of archaeological material to which the restrictions apply.

DATES: *Effective Date:* March 5, 2013.

FOR FURTHER INFORMATION CONTACT: For legal aspects, George Frederick McCray, Chief, Cargo Security, Carriers and Restricted Merchandise Branch, Regulations and Rulings, Office of International Trade, (202) 325–0082. For operational aspects: Virginia McPherson, Chief, Interagency Requirements Branch, Trade Policy and Programs, Office of International Trade, (202) 863–6563.

SUPPLEMENTARY INFORMATION:

Background

The value of cultural property is immeasurable. Such items often constitute the very essence of a society and convey important information concerning a people's origin, history, and traditional setting. The importance and popularity of such items regrettably makes them targets of theft, encourages clandestine looting of archaeological sites, and results in their illegal export and import.

The United States shares in the international concern for the need to protect endangered cultural property. The appearance in the United States of stolen or illegally exported artifacts from other countries where there has been pillage has, on occasion, strained our foreign and cultural relations. This situation, combined with the concerns of museum, archaeological, and scholarly communities, was recognized by the President and Congress. It became apparent that it was in the national interest for the United States to join with other countries to control illegal trafficking of such articles in international commerce.

The United States joined international efforts and actively participated in deliberations resulting in the 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (823 U.N.T.S. 231 (1972)). U.S. acceptance of the 1970 UNESCO Convention was codified into U.S. law as the ''Convention on Cultural Property Implementation Act'' (Pub. L. 97–446, 19 U.S.C. 2601 *et seq.*) (the Act). This was done to promote U.S. leadership in achieving greater international cooperation towards preserving cultural treasures that are of importance to the nations from where they originate and contribute to greater international understanding of our common heritage.

Since the Act entered into force, import restrictions have been imposed on the archaeological materials of a number of State Parties to the 1970 UNESCO Convention. These restrictions have been imposed as a result of requests for protection received from those nations. More information on import restrictions can be found on the Cultural Property Protection Web site (*http://exchanges.state.gov/heritage/culprop.html*).

This document announces that import restrictions are now being imposed on certain archaeological material from Belize.

Determinations

Under 19 U.S.C. 2602(a)(1), the United States must make certain determinations before entering into an agreement to impose import restrictions under 19 U.S.C. 2602(a)(2). On September 19, 2012, the Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State, made the determinations required under the statute with respect to certain archaeological material originating in Belize that are described in the designated list set forth below in this document. These determinations include the following: (1) That the cultural patrimony of Belize is in jeopardy from the pillage of archaeological material originating in Belize from approximately 9000 B.C. up to 250 years old representing the Pre-Columbian era through the Early and Late Colonial Periods (19 U.S.C. 2602(a)(1)(A)); (2) that the Government of Belize has taken measures consistent with the Convention to protect its cultural patrimony (19 U.S.C. 2602(a)(1)(B)); (3) that import restrictions imposed by the United States would be of substantial benefit in deterring a serious situation of pillage, and remedies less drastic are not available (19 U.S.C. 2602(a)(1)(C)); and (4) that the application of import restrictions as set forth in this final rule is consistent with the general interests of the international community in the interchange of cultural property among nations for scientific, cultural, and educational purposes (19 U.S.C. 2602(a)(1)(D)). The Assistant Secretary also found that the material described in the determinations meet the statutory definitions of ''archaeological material of the state party'' (19 U.S.C. 2601(2)).

The Agreement

On February 27, 2013, the United States and Belize entered into a bilateral agreement pursuant to the provisions of 19 U.S.C. 2602(a)(2). The agreement enables the promulgation of import restrictions on categories of archaeological material representing Belize's cultural heritage that is at least 250 years old, dating from the Pre-Ceramic (from approximately 9000 B.C.), Pre-Classic, Classic, and Post-Classic Periods of the Pre-Columbian era through the Early and Late Colonial Periods. A list of the categories of archaeological material subject to the import restrictions is set forth later in this document.

Restrictions and Amendment to the Regulations

In accordance with the Agreement, importation of material designated below is subject to the restrictions of 19 U.S.C. 2606 and § 12.104g(a) of the U.S. Customs and Border Protection (CBP) regulations (19 CFR 12.104g(a)) and will be restricted from entry into the United States unless the conditions set forth in 19 U.S.C. 2606 and § 12.104c of the CBP regulations (19 CFR 12.104c) are met. CBP is amending § 12.104g(a) of the CBP regulations (19 CFR 12.104g(a)) to indicate that these import restrictions have been imposed.

Designated List of Archaeological Material of Belize

The bilateral agreement between the United States and Belize includes, but is not limited to, the categories of objects described in the designated list set forth below. Any dimensions listed are approximations and the import restrictions include complete examples of objects and fragments thereof. These categories of objects are subject to the import restrictions set forth above, in accordance with the above explained applicable law and the regulation amended in this document (19 CFR 12.104(g)(a)).

The archeological material covered under this agreement originated in Belize, from the following periods: Archaic, Pre-Classic, Classic, Post-Classic, and Early and Late Colonial Periods. The import restrictions apply to archeological material, described below, ranging in date from approximately 9000 B.C. to at least 250 years old, including, but not limited to, objects comprised of ceramic, stone, metal, shell, bone, glass, and wood.

I. Ceramic/Terracotta/Fired Clay—Unpainted, monochrome, bichrome, and polychrome. Decorative motifs include human, animal, and hybrid figures; curvilinear and rectilinear abstract designs; mythological and historic scenes; and other motifs. Decorative techniques include: painting, fluting, gouging, incisions, and modeling, among others. Forms vary considerably, and may include lids, tripod feet, or other supplementary decoration.

A. *Common Vessels*

1. *Vases and bottles*—(10–50 cm ht).
2. *Bowls*—(5–25 cm ht).
3. *Dishes and plates*—(10–50 cm diam).
4. *Jars*—(10–100 cm ht).
5. *Bottles*—(5–50 cm ht).

B. *Special Forms*

1. *Figurines*—(5–20 cm ht).
2. *Whistles, rattles and flutes*—(5–20 cm ht).
3. *Miniature vessels*—(5–10 cm ht).
4. *Stamps and seals.*
5. *Effigy vessels*—(15–50 cm ht).
6. *Incense burners*—(25–50 cm ht).
7. *Drums*—(10–50 cm ht).

II. Stone—Objects in any type of stone, including jade, greenstone, obsidian, flint, alabaster/calcite, limestone, slate, or other.

A. *Tools*—forms such as points, blades, scrapers, hoes, grinding stones, eccentrics and, others.

B. *Jewelry*—forms such as necklaces, earplugs, pendants, beads, and others.

C. *Monumental Stone Art*—forms such as stelae, round altars, architectural elements, and others.

D. *Vessels*—forms such as bowls and vases.

E. *Figurines*—forms such as human, animal, and mythological creatures.

F. *Masks*—burial masks of variable stone composition.

G. *Mirrors*—round or rectangular forms composed of pyrite pieces.

III. Metal—Objects in copper, gold, silver, brass, or other. Beaten or cast into shape, often decorated with engraving, inlay, puncturing, or attachments.

IV. Shell—Objects made out of modified shell, often decorated with incisions or inlays.

V. Bone—Objects made out of modified human or animal bone, including tools, such as hooks and punches; jewelry, such as necklaces and pendants; and objects for ritual use.

VI. Glass—Objects made of glass, including utilitarian forms such as bottles, beads, figurines, and others.

VII. Wood—Objects made of wood, including utilitarian forms such as canoes, vessels, tools, and others; and ritual forms, such as crosses, figurines, and others.

Inapplicability of Notice and Delayed Effective Date

This amendment involves a foreign affairs function of the United States and is, therefore, being made without notice or public procedure (5 U.S.C. 553(a)(1)). For the same reason, a delayed effective date is not required under 5 U.S.C. 553(d)(3).

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Executive Order 12866

Because this rule involves a foreign affairs function of the United States, it is not subject to Executive Order 12866.

Signing Authority

This regulation is being issued in accordance with 19 CFR 0.1(a)(1).

List of Subjects in 19 CFR Part 12

Cultural property, Customs duties and inspection, Imports, Prohibited merchandise, Reporting and recordkeeping requirements.

Amendment to CBP Regulations

For the reasons set forth above, part 12 of Title 19 of the Code of Federal Regulations (19 CFR part 12), is amended as set forth below:

PART 12—SPECIAL CLASSES OF MERCHANDISE

■ 1. The general authority citation for part 12 and the specific authority citation for § 12.104g continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

* * * * *

Sections 12.104 through 12.104i also issued under 19 U.S.C. 2612;

* * * * *

■ 2. In § 12.104g, paragraph (a), the table is amended by adding Belize to the list in appropriate alphabetical order as follows:

§ 12.104g Specific items or categories designated by agreements or emergency actions.

(a) * * *

State party	Cultural property	Decision No.
Belize	Archaeological material representing Belize's cultural heritage that is at least 250 years old, dating from the Pre-Ceramic (from approximately 9000 B.C.), Pre-Classic, Classic, and Post-Classic Periods of the Pre-Columbian era through the Early and Late Colonial Periods.	CBP Dec. 13–05.
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Approved: March 1, 2013.

David V. Aguilar,

Deputy Commissioner, U.S. Customs and Border Protection.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 2013–05151 Filed 3–4–13; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2013–0104]

Drawbridge Operation Regulation; Gulf Intracoastal Waterway, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the regulation governing the operation of the Lapalco Boulevard bascule span drawbridge across the Harvey Canal Route, Gulf Intracoastal Waterway (GIWW), mile 2.8 at New Orleans, Jefferson Parish, Louisiana. The deviation is necessary to change out the four drive panels for the motors that operate the bridge. This deviation allows the bridge to remain closed to navigation for seven consecutive days.

DATES: This deviation is effective from 6 a.m. on Monday, March 18, 2013, until 6 a.m. on Monday, March 25, 2013.

ADDRESSES: The docket for this deviation, [USCG–2013–0104] is available at *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 deviation. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Kay Wade, Bridge Branch Office, Coast Guard; telephone 504–671–2128, email Kay.B.Wade@uscg.mil. If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: Jefferson Parish has requested a temporary deviation from the operating schedule for the Bascule Span Bridge across the Harvey Canal Route, Intracoastal Waterway, mile 2.8 at New Orleans, Jefferson Parish, Louisiana. The bridge has a vertical clearance of 45 feet above mean high water in the closed-to-navigation position and unlimited in the open-to-navigation position. Vessels requiring a clearance of less than 45 feet may transit beneath the bridge during maintenance operations.

In accordance with 33 CFR 117.451(a), the bridge currently opens on signal for the passage of vessels; except that, from 6:30 a.m. to 8:30 a.m. and from 3:45 p.m. to 5:45 p.m. Monday through Friday except holidays, the draw need not be opened for the passage of vessels. This deviation allows the bridge to remain closed to navigation from 6 a.m. on Monday, March 18, 2013, until 6 a.m. on Monday, March 25, 2013. At all other times, the bridge will open on signal for the passage of vessels in accordance with 33 CFR 117.451(a).

The closure is necessary in order to change out the four drive panels for the motors that operate the bridge. This maintenance is essential for the continued operation of the bridge. Notices will be published in the Eighth Coast Guard District Local Notice to Mariners and will be broadcast via the Coast Guard Broadcast Notice to Mariners System.

Navigation on the waterway consists mainly of tugs with tows with some commercial fishing vessels and recreational craft. Coordination between the Coast Guard and the waterway users determined that there should not be any significant effects on these vessels. The bridge will be unable to open during these repairs; however, an alternate route is available via the GIWW (Algiers Alternate Route).

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: February 21, 2013.

David M. Frank,

Bridge Administrator.

[FR Doc. 2013–05071 Filed 3–4–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2013–0091]

RIN 1625–AA00

Safety Zone; MODU KULLUK; Kiliuda Bay, Kodiak Island, AK to Captains Bay, Unalaska Island, AK

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the navigable waters, from surface to seabed, around the Outer Continental Shelf Mobile Offshore Drilling Unit (MODU) KULLUK currently located in Kiliuda Bay, Kodiak Island, Alaska with planned towed transit into Captains Bay, Unalaska Island, AK. The temporary safety zone will encompass the navigable waters within a 1000 meter radius of the MODU KULLUK while it is being towed to and located within Captains Bay to include while at anchor and through the loading of the MODU KULLUK onto the transport ship M/V XIANG RUI KOU. The purpose of the safety zone is to protect persons and vessels from the inherent dangers of towing and loading operations of the MODU KULLUK.

DATES: This rule is effective with actual notice from February 20, 2013 until March 5, 2013. This rule is effective in the *Code of Federal Regulations* from March 5, 2013 until April 30, 2013.

ADDRESSES: The docket for this rule, USCG–2013–0091, is available online at *www.regulations.gov* by typing in the docket number in the ''SEARCH'' box and clicking ''SEARCH.'' Next, click on the Open Docket Folder on the line associated with this rule. This material is 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 LCDR Jason Boyle, U.S. Coast Guard, Seventeenth Coast Guard District; telephone 907–463–2821, *jason.t.boyle@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

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

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable. The MODU KULLUK grounded during severe weather in the vicinity of Sitkalidak Island and response, recovery and salvage efforts began immediately. Following an assessment, it was determined that the MODU KULLUK required towing to Captains Bay, Unalaska for loading aboard a transport ship for further relocation. This new temporary final rule is established to cover the anticipated time necessary for the towing of MODU KULLUK to Captains Bay and the operations necessary to load the vessel onto the transport ship for transit to the vessels repair facility. Notice and comment rulemaking is impracticable because this transport for further repairs was unexpected and requiring notice and comment would create further delay in achieving those repairs and safeguarding the public from the significant amount of vessels and crew required to tow this MODU.

For similar reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** because immediate action is needed to minimize potential danger to the public during the period of time when there will be unusually high vessel traffic during towing operations to Captains Bay, Alaska and the complexities of loading the MODU KULLUK aboard the transport ship.

B. Basis and Purpose

The MODU KULLUK unexpectedly grounded during severe weather in the vicinity of Sitkalidak Island, Alaska, precipitating a salvage and recovery operation. The MODU KULLUK was towed to Kiliuda Bay for damage assessments. The Coast Guard believes a safety zone is needed based on the significant number of persons, vessels and activities necessary to tow and load the MODU KULLUK, a non-self-propelled vessel. The tow operations are expected to involve a large number of vessels, including tow vessels, and pollution response vessels. The tow and loading operation is anticipated to take up to 30 days.

A temporary safety zone is needed to ensure vessels engaged in the towing operation are able to maneuver unimpeded in the vicinity of the MODU KULLUK and to keep other mariners a safe distance from tow cables, vessels and other activities involved in the towing operations from Kiliuda Bay, AK to Captains Bay, AK and the loading of the MODU KULLUK onto the transport ship M/V XIANG RUI KOU that will take place within the navigable waters of Captains Bay, AK.

Previously, a temporary final rule (USCG–2011–0668) was issued on January 2, 2013, creating a safety zone one nautical mile around the MODU KULLUK. A second temporary final rule (USCG–2012–1088) was issued on January 6, 2013, creating a safety zone around the MODU KULLUK while it was towed and anchored for assessment and repairs in Kiliuda Bay.

C. Discussion of Final Rule

For the reasons stated above, the Coast Guard is establishing a safety zone in the navigable waters, from surface to seabed, within a 1000 meter radius of the MODU KULLUK while it being towed to and anchored in Captains Bay, AK and while it is being loaded onto the M/V XIANG RUI KOU from February 20, 2013 through April 30, 2013. If the salvage and recovery operations are completed, and the safety zone is determined to be no longer necessary, enforcement of the zone will end prior to April 30, 2013.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

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

The proposed rule is not a significant regulatory action due to the minimal impact this will have on standard vessel operations within the vicinity of transit route from Kiliuda Bay, AK to Captains Bay, AK during the winter months and it will be enforced for a short duration. The proposed safety zone is designed to allow vessels transiting through the area to safely travel around the MODU KULLUK during towing operations and loading area without incurring additional cost or delay.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit through or anchor in the transit route from Kiliuda Bay, AK to Captains Bay, AK or within Captains Bay, AK in the vicinity of the MODU KULLUK from February 20, 2013, to April 30, 2013.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will be effective for a short period of time, enforcement will end once the towing and loading operations are completed, and the zone is limited to the waters within 1000 meter radius of the MODU KULLUK while it is towed to or at anchor within Captains Bay.

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 the collection of new 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 affect 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 will not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule involves establishing regulations for a safety zone. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. 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 is amending 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS.

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

Authority: 33 U.S.C 1226, 1231; 46 U.S.C. Chapter 701, secs. 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. 0171.1.

■ 2. Add § 165.T17–0091 to read as follows:

§ 165.T17–0091 Safety Zone; MODU KULLUK; Kiliuda Bay, Kodiak Island to Captains Bay, Unalaska Island, Alaska.

(a) *Location.* The following areas are safety zones: All navigable waters, from the surface to the seabed, within a one thousand meter radius of the MODU KULLUK, a large ocean-going drill vessel, while it is under tow from Kiliuda Bay, Kodiak Island to Captains Bay, Unalaska Island, Alaska and while the MODU KULLUK is anchored or moored in Captains Bay including times while it is being loaded onto and aboard the transport ship M/V XIANG RUI KOU.

(b) *Effective date.* The safety zone is effective beginning February 20, 2013, and terminates at 11:59 p.m. on April 30, 2013. Enforcement of this safety zone may end earlier if ordered by the Captain of the Port, Western Alaska.

(c) *Regulations.* The general regulations governing safety zones contained in § 165.23 apply to all vessels operating within the areas described in paragraph (a). In addition to the general regulations, the following provisions apply to this safety zone:

(1) All persons and vessels shall comply with the instructions of the Captain of the Port (COTP) or designated on-scene representative, consisting of commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of a vessel shall proceed as directed by the COTP's designated on-scene representative.

(2) Entry into the safety zone is prohibited unless authorized by the

COTP or his designated on-scene representative. Any persons desiring to enter the safety zone must contact the designated on-scene representative on VHF channel 16 (156.800 MHz) and receive permission prior to entering.

(3) If permission is granted to transit within the safety zone, all persons and vessels must comply with the instructions of the designated on-scene representative.

(4) The COTP will notify the maritime and general public by marine information broadcast during the period of time that the safety zones are in force including notification that the MODU KULLUK is loaded onto the M/V XIANG RUI KOU by providing notice in accordance with 33 CFR 165.7.

(d) *Penalties.* Persons and vessels violating this rule are subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

Dated: February 20, 2013.

Paul Mehler III,

Captain, U.S. Coast Guard, Captain of the Port, Western Alaska.

[FR Doc. 2013–04989 Filed 3–4–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2012–1075]

RIN 1625–AA00

Safety Zone, Change to Enforcement Period, Patapsco River, Northwest and Inner Harbors; Baltimore, MD

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the enforcement period of a safety zone regulation for the annual movement of the historic sloop-of-war USS CONSTELLATION. This regulation applies to a recurring event that takes place in Baltimore, MD. The safety zone regulation is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of the Patapsco River, Northwest Harbor and Inner Harbor during the event.

DATES: This rule is effective April 4, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2012–1075]. 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 L. 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 January 9, 2013, we published a notice of proposed rulemaking (NPRM) entitled ''Safety Zone, Change to Enforcement Period, Patapsco River, Northwest and Inner Harbors; Baltimore, MD'' in the **Federal Register** (78 FR 1795). We received no comments on the proposed rule. No public meeting was requested, and none was held.

B. Basis and Purpose

Historic Ships in Baltimore is planning to conduct its ''turn-around'' ceremony involving the sloop-of-war USS CONSTELLATION in Baltimore, Maryland on the Thursday before Memorial Day (observed). Planned events include a three-hour, round-trip tow of the USS CONSTELLATION in the Port of Baltimore, consisting of an onboard salute with navy pattern cannon while the historic vessel is positioned off the Fort McHenry National Monument and Historic Site. Beginning at 3 p.m., the historic Sloop-of-War USS CONSTELLATION will be towed ''dead ship,'' which means that the vessel will be underway without the benefit of mechanical or sail propulsion. The return dead ship tow of the USS CONSTELLATION to its berth in the Inner Harbor is expected to occur immediately upon execution of a tug-assisted ''turn-around'' of the USS CONSTELLATION on the Patapsco River near Fort McHenry. The Coast Guard anticipates a large recreational boating fleet during this event, scheduled on a late Thursday afternoon before the Memorial Day Holiday weekend in Baltimore, Maryland. Operators should expect significant vessel congestion along the planned route. In the event of inclement weather, the ''turn-around'' will be rescheduled for the Thursday following Memorial Day (observed).

To address safety concerns during the event, the Captain of the Port Baltimore is changing the enforcement period of a safety zone regulation for the annual movement of the historic sloop-of-war USS CONSTELLATION, conducted upon certain waters of the Patapsco River, Northwest Harbor and Inner Harbor. The change to the enforcement period of the safety zone will help the Coast Guard provide a clear transit route for the participating vessels, and provide a safety buffer around the participating vessels while they are in transit. This rule is needed to ensure safety on the waterway in the Port of Baltimore before, during and after the scheduled event.

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 these statutes and executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. Although this safety zone restricts vessel traffic through the affected area, the effect of this regulation will not be significant due to the limited size and duration that the regulated area will be in effect. In addition, notifications will be made to the maritime community via marine information broadcasts so mariners may adjust their plans accordingly.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard 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 operate or transit through or within the safety zone during the enforcement period. Before the effective period, maritime advisories will be widely available to the maritime community.

3. Assistance for Small Entities

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

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

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Revise paragraph (e) of § 165.512 as follows:

§ 165.512 Safety Zone; Patapsco River, Northwest and Inner Harbors, Baltimore, MD.

* * * * *

(e) *Enforcement period.* This section will be enforced from 2 p.m. through 7

p.m. on the Thursday before Memorial Day (observed), and, if necessary due to inclement weather, from 2 p.m. through 7 p.m. on the Thursday following Memorial Day (observed).

Dated: February 21, 2013.

Kevin C. Kiefer,

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

[FR Doc. 2013–05076 Filed 3–4–13; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA–HQ–OAR–2011–0542; FRL–9686–3]

RIN 2060–AR07

Regulation of Fuels and Fuel Additives: Identification of Additional Qualifying Renewable Fuel Pathways Under the Renewable Fuel Standard Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing a final rule identifying additional fuel pathways that EPA has determined meet the biomass-based diesel, advanced biofuel or cellulosic biofuel lifecycle greenhouse gas (GHG) reduction requirements specified in Clean Air Act section 211(o), the Renewable Fuel Standard (RFS) Program, as amended by the Energy Independence and Security Act of 2007 (EISA). This final rule describes EPA's evaluation of biofuels produced from camelina (*Camelina sativa*) oil and energy cane; it also includes an evaluation of renewable gasoline and renewable gasoline blendstocks, and clarifies our definition of renewable diesel. The inclusion of these pathways creates additional opportunity and flexibility for regulated parties to comply with the advanced and cellulosic requirements of EISA and provides the certainty necessary for investments to bring these biofuels into commercial production from these new feedstocks.

We are not finalizing at this time determinations on biofuels produced from giant reed (*Arundo donax*) or napier grass (*Pennisetum purpureum*) or biodiesel produced from esterification. We continue to consider the issues concerning these proposals, and will make a final decision on them at a later time.

DATES: This rule is effective on May 6, 2013.

FOR FURTHER INFORMATION CONTACT: Vincent Camobreco, Office of Transportation and Air Quality (MC6401A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–9043; fax number: (202) 564–1686; email address: *camobreco.vincent@epa.gov*.

SUPPLEMENTARY INFORMATION:

Does this action apply to me?

Entities potentially affected by this action are those involved with the production, distribution, and sale of transportation fuels, including gasoline and diesel fuel or renewable fuels such as ethanol and biodiesel. Regulated categories and entities affected by this action include:

Category	NAICS [1] Codes	SIC [2] Codes	Examples of potentially regulated entities
Industry	324110	2911	Petroleum Refineries.
Industry	325193	2869	Ethyl alcohol manufacturing.
Industry	325199	2869	Other basic organic chemical manufacturing.
Industry	424690	5169	Chemical and allied products merchant wholesalers.
Industry	424710	5171	Petroleum bulk stations and terminals.
Industry	424720	5172	Petroleum and petroleum products merchant wholesalers.
Industry	454319	5989	Other fuel dealers.

[1] North American Industry Classification System (NAICS).
[2] Standard Industrial Classification (SIC) system code.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could be potentially regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your entity is regulated by this action, you should carefully examine the applicability criteria of Part 80, subparts D, E and F of title 40 of the Code of Federal Regulations. If you have any question regarding applicability of this action to a particular entity, consult the person in the preceding **FOR FURTHER INFORMATION CONTACT** section above.

Outline of This Preamble

I. Executive Summary
A. Purpose of the Regulatory Action
B. Summary of the Major Provisions of the Regulatory Action In Question
II. Identification of Additional Qualifying Renewable Fuel Pathways Under the Renewable Fuel Standard (RFS) Program
A. Analysis of Lifecycle Greenhouse Gas Emissions for Biodiesel, Renewable Diesel, Jet Fuel, Heating Oil, Naphtha, and Liquefied Petroleum Gas (LPG) Produced From Camelina Oil
B. Lifecycle Greenhouse Gas Emissions Analysis for Ethanol, Diesel, Jet Fuel, Heating Oil, and Naphtha Produced From Energy Cane
C. Lifecycle Greenhouse Gas Emissions Analysis for Certain Renewable Gasoline and Renewable Gasoline Blendstocks Pathways
D. Esterification Production Process Inclusion for Specified Feedstocks Producing Biodiesel
III. Additional Changes to Listing of Available Pathways in Table 1 of 80.1426
IV. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132 (Federalism)
F. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)
G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act
V. Statutory Provisions and Legal Authority

I. Executive Summary

A. Purpose of This Regulatory Action

In this rulemaking, EPA is taking final action to identify additional fuel

pathways that we have determined meet the greenhouse gas (GHG) reduction requirements under the Renewable Fuel Standard (RFS) program. This final rule describes EPA's evaluation of biofuels produced from camelina (*Camelina sativa*) oil, which qualify as biomass-based diesel or advanced biofuel, as well as biofuels from energy cane which qualify as cellulosic biofuel. This final rule also qualifies renewable gasoline and renewable gasoline blendstock made from certain qualifying feedstocks as cellulosic biofuel. Finally, this rule clarifies the definition of renewable diesel to explicitly include jet fuel.

EPA is taking this action as a result of changes to the RFS program in Clean Air Act (''CAA'') Section 211(o) required by the Energy Independence and Security Act of 2007 (''EISA''). This rulemaking modifies the RFS regulations published at 40 CFR § 80.1400 *et seq.* The RFS program regulations specify the types of renewable fuels eligible to participate in the RFS program and the procedures by which renewable fuel producers and importers may generate Renewable Identification Numbers (''RINs'') for the qualifying renewable fuels they produce through approved fuel pathways. See 75 FR 14670 (March 26, 2010); 75 FR 26026 (May 10, 2010); 75 FR 37733 (June 30, 2010); 75 FR 59622 (September 28, 2010); 75 FR 76790 (December 9, 2010); 75 FR 79964 (December 21, 2010); 77 FR 1320 (January 9, 2012); and 77 FR 74592 (December 17, 2012).

By qualifying these new fuel pathways, this rule provides opportunities to increase the volume of advanced, low-GHG renewable fuels—such as cellulosic biofuels—under the RFS program. EPA's comprehensive analyses show significant lifecycle GHG emission reductions from these fuel types, as compared to the baseline gasoline or diesel fuel that they replace.

B. Summary of the Major Provisions of the Regulatory Action In Question

This final rule describes EPA's evaluation of:

Camelina (*Camelina sativa*) oil *(*new feedstock)

- Biodiesel, and renewable diesel, (including jet fuel, and heating oil)—*qualifying to generate biomass-based diesel and advanced biofuel RINs*
- Naphtha and liquefied petroleum gas (LPG)—*qualifying to generate advanced biofuel RINs*

Energy cane cellulosic biomass (new feedstock)

- Ethanol, renewable diesel (including renewable jet fuel and heating oil), and renewable gasoline blendstock—*qualifying to generate cellulosic biofuel RINs*

Renewable gasoline and renewable gasoline blendstock (new fuel types)

- Produced from crop residue, slash, pre-commercial thinnings, tree residue, annual cover crops, and cellulosic components of separated yard waste, separated food waste, and separated municipal solid waste (MSW)
- Using the following processes—all utilizing natural gas, biogas, and/or biomass as the only process energy sources—*qualifying to generate cellulosic biofuel RINs:*
  - Thermochemical pyrolysis
  - Thermochemical gasification
  - Biochemical direct fermentation
  - Biochemical fermentation with catalytic upgrading
  - Any other process that uses biogas and/or biomass as the only process energy sources

This final rule adds these pathways to Table 1 to § 80.1426. This final rule allows producers or importers of fuel produced under these pathways to generate RINs in accordance with the RFS regulations, providing that the fuel meets other definitional criteria for renewable fuel. The inclusion of these pathways creates additional opportunity and flexibility for regulated parties to comply with the requirements of EISA. Substantial investment has been made to commercialize these new feedstocks, and the cellulosic biofuel industry in the United States continues to make significant advances in its progress towards large scale commercial production. Approval of these new feedstocks will help further the Congressional intent to expand the volumes of cellulosic and advanced biofuels.

We are also finalizing two changes to Table 1 to 80.1426 that were proposed on July 1, 2011(76 FR 38844). The first change adds ID letters to pathways to facilitate references to specific pathways. The second change adds ''rapeseed'' to the existing pathway for renewable fuel made from canola oil.

II. Identification of Additional Qualifying Renewable Fuel Pathways Under the Renewable Fuel Standard (RFS) Program

This rule was originally published in the **Federal Register** at 77 FR 462, January 5, 2012 as a direct final rule, with a parallel publication of a proposed rule. A limited number of relevant adverse comments were received, and EPA published a withdrawal notice of the direct final rule on March 5, 2012 (77 FR 13009). A second comment period was not issued, since the simultaneous publication of the proposed rule provided an adequate notice and comment process. EPA is finalizing several of the proposed actions in this final rule, but continues to consider determinations on biofuels produced from giant reed (*Arundo donax*) or napier grass (*Pennisetum purpureum*) or biodiesel produced from esterification. EPA will make a final decision on theses elements of the proposal at a later time.

In this action, EPA is issuing a final rule to identify in the RFS regulations additional renewable fuel production pathways that we have determined meet the greenhouse gas (GHG) reduction requirements of the RFS program. There are three critical components of a renewable fuel pathway: (1) Fuel type, (2) feedstock, and (3) production process. Each specific combination of the three components, or fuel pathway, is assigned a D code which is used to designate the type of biofuel and its compliance category under the RFS program. This final rule describes EPA's lifecycle GHG evaluation of camelina oil and energy cane.

Determining whether a fuel pathway satisfies the CAA's lifecycle GHG reduction thresholds for renewable fuels requires a comprehensive evaluation of the lifecycle GHG emissions of the renewable fuel as compared to the lifecycle GHG emissions of the baseline gasoline or diesel fuel that it replaces. As mandated by CAA section 211(o), the GHG emissions assessments must evaluate the aggregate quantity of GHG emissions (including direct emissions and significant indirect emissions such as significant emissions from land use changes) related to the full fuel lifecycle, including all stages of fuel and feedstock production, distribution, and use by the ultimate consumer.

In examining the full lifecycle GHG impacts of renewable fuels for the RFS program, EPA considers the following:

- Feedstock production—based on agricultural sector models that include direct and indirect impacts of feedstock production.
- Fuel production—including process energy requirements, impacts of any raw materials used in the process, and benefits from co-products produced.
- Fuel and feedstock distribution—including impacts of transporting feedstock from production to use, and transport of the final fuel to the consumer.
- Use of the fuel—including combustion emissions from use of the fuel in a vehicle.

Many of the pathways evaluated in this rulemaking rely on a comparison to the lifecycle GHG analysis work that was done as part of the Renewable Fuel

Standard Program Final Rule, published March 26, 2010 (75 FR 14670) (March 2010 RFS). The evaluations here rely on comparisons to the existing analyses presented in the March 2010 final rule. EPA plans to periodically review and revise the methodology and assumptions associated with calculating the GHG emissions from all renewable fuel pathways.

A. Analysis of Lifecycle Greenhouse Gas Emissions for Biodiesel, Renewable Diesel, Jet Fuel, Heating Oil, Naphtha, and Liquefied Petroleum Gas (LPG) Produced From Camelina Oil

The following sections describe EPA's evaluation of camelina (*Camelina sativa*) as a biofuel feedstock under the RFS program. As discussed previously, this analysis relies on a comparison to the lifecycle GHG analysis work that was done as part of the Renewable Fuel Standard Program (RFS) Final Rule, published March 26, 2010 for soybean oil biofuels.

1. Feedstock Production

Camelina sativa (camelina) is an oilseed crop within the flowering plant family Brassicaceae that is native to Northern Europe and Central Asia. Camelina's suitability to northern climates and low moisture requirements allows it to be grown in areas that are unsuitable for other major oilseed crops such as soybeans, sunflower, and canola/rapeseed. Camelina also requires the use of little to no tillage.[1] Compared to many other oilseeds, camelina has a relatively short growing season (less than 100 days), and can be grown either as a spring annual or in the winter in milder climates.[2] [3] Camelina can also be used to break the continuous planting cycle of certain grains, effectively reducing the disease, insect, and weed pressure in fields planted with such grains (like wheat) in the following year.[4]

Although camelina has been cultivated in Europe in the past for use as food, medicine, and as a source for lamp oil, commercial production using modern agricultural techniques has been limited.[5] In addition to being used as a renewable fuel feedstock, small quantities of camelina (less than 5% of total U.S. camelina production) are currently used as a dietary supplement and in the cosmetics industry. Approximately 95% of current US production of camelina has been used for testing purposes to evaluate its use as a feedstock to produce primarily jet fuel.[6] The FDA has not approved camelina for food uses, although it has approved the inclusion of certain quantities of camelina meal in commercial feed.[7]

In response to the proposed rule, EPA received comments highlighting the concern that by approving certain new feedstock types under the RFS program, EPA would be encouraging their introduction or expanded planting without considering their potential impact as invasive species.[8] The degree of concern expressed by the commenters depended somewhat on the feedstock. As pointed out by the commenters, camelina and energy cane are not ''native species,'' defined as ''a species that, other than as a result of an introduction, historically occurred or currently occurs in that ecosystem.'' The commenters asserted that there is a ''potential risk posed by the non-native species camelina and energy cane.'' In contrast, comments stated that giant reed (*Arundo donax*) or napier grass (*Pennisetum purpureum*) have been identified as invasive species in certain parts of the country. These commenters asserted that the Arundo donax and napier grass pose a ''clear risk of invasion.'' Commenters stated that EPA should not approve the proposed feedstocks until EPA has conducted an invasive species analysis, as required under Executive Order (EO) 13112.[9]

The information before us does not raise significant concerns about the threat of invasiveness and related GHG emissions for camelina. For example, camelina is not listed on the Federal Noxious Weed List,[10] nor is it listed on any state invasive species or noxious weed list. We believe that the production of camelina is unlikely to spread beyond the intended borders in which it is grown, which is consistent with the assumption in EPA's lifecycle analysis that significant expenditures of energy or other sources of GHGs will not be required to remediate the spread of this feedstock from the specific locations where it is grown as a renewable fuel feedstock for the RFS program. Therefore, we are finalizing the camelina pathway in this rule based on our lifecycle analysis discussed below.[11]

Camelina is currently being grown on approximately 50,000 acres of land in the U.S., primarily in Montana, eastern Washington, and the Dakotas.[12] USDA does not systematically collect camelina production information; therefore data on historical acreage is limited. However, available information indicates that camelina has been grown on trial plots in 12 U.S. states.[13]

In response to the proposed rule, two commenters were supportive of the use of renewable feedstocks such as camelina oil to produce biofuels for aviation. One commenter noted that aviation is unique in its complete dependency upon liquid fuel—today and into the foreseeable future. Another commenter noted that development of additional feedstocks and production pathways should increase supply and ultimately move us closer to the day when renewable jet fuels are price-competitive with legacy fossil fuels and help cut our dependence on foreign oil. EPA also received comment regarding a concern that EPA did not adequately establish that camelina would only be grown on fallow land and therefore would not have a land use impact and that EPA overestimated the likely yields in growing camelina and therefore underestimated the land requirements.

In terms of the comment on camelina not being grown on fallow land, for the purposes of analyzing the lifecycle GHG emissions of camelina, EPA has considered the likely production pattern for camelina grown for biofuel production. Given the information currently available, camelina is

[1] Putnam, D.H., J.T. Budin, L.A. Field, and W.M. Breene. 1993. Camelina: A promising low-input oilseed. p. 314–322. In: J. Janick and J.E. Simon (eds.), New crops. Wiley, New York.

[2] Moser, B.R., Vaughn, S.F. 2010. Evaluation of Alkyl Esters from Camelina Sativa Oil as Biodiesel and as Blend Components in Ultra Low Sulfur Diesel Fuel. Bioresource Technology. 101:646–653.

[3] McVay, K.A., and P.F. Lamb. 2008. Camelina production in Montana. MSU Ext. MT200701AG (revised). *http://msuextension.org/publications/AgandNaturalResources/MT200701AG.pdf.*

[4] Putnam *et al.,* 1993.

[5] Lafferty, Ryan M., Charlie Rife and Gus Foster. 2009. Spring camelina production guide for the Central High Plains. Blue Sun Biodiesel special publication. Blue Sun Agriculture Research & Development, Golden, CO. *http://www.gobluesun.com/upload/Spring%20Camelina%20Production%20Guide%202009.pdf.*

[6] Telephone conversation with Scott Johnson, Sustainable Oils, January 11, 2011.

[7] See *http://agr.mt.gov/camelina/FDAletter11-09.pdf.*

[8] Comment submitted by Jonathan Lewis, Senior Counsel, Climate Policy, Clean Air Task Force *et al.,* dated February 6, 2012. Document ID # EPA–HQ–OAR–2011–0542–0118.

[9] *http://www.gpo.gov/fdsys/pkg/FR-1999-02-08/pdf/99-3184.pdf.*

[10] However, this list is not exhaustive and is generally limited to species that are not currently in the U.S. or are incipient to the U.S. See *http://plants.usda.gov/java/noxious?rptType=Federal&statefips=&sort=sc.* Accessed on March 28, 2012.

[11] EPA continues to evaluate Arundo donax and napier grass as feedstock for a renewable fuel pathway, and will make a final decision on these pathways at a later time.

[12] McCormick, Margaret. ''Oral Comments of Targeted Growth, Incorporated'' Submitted to the EPA on June 9, 2009.

[13] See *https://www.camelinacompany.com/Marketing/PressRelease.aspx?Id=25.*

expected to be primarily planted in the U.S. as a rotation crop on acres that would otherwise remain fallow.[14] Because camelina has not yet been established as a commercial crop with significant monetary value, farmers are unlikely to dedicate acres for camelina production that could otherwise be used to produce other cash crops. Since camelina would therefore not be expected to displace another crop but rather maximize the value of the land through planting camelina in rotation, EPA does not believe new acres would need to be brought into agricultural use to increase camelina production. In addition, camelina currently has only limited high-value niche markets for uses other than renewable fuels. Unlike commercial crops that are tracked by USDA, camelina does not have a well-established, internationally traded market that would be significantly affected by an increase in the use of camelina to produce biofuels. For these reasons, which are described in more detail below, EPA has determined that production of camelina-based biofuels is not expected to result in significant GHG emissions related to direct land use change since it is expected to be grown on fallow land. Furthermore, due to the limited non-biofuel uses for camelina, production of camelina-based biofuels is not expected to have a significant impact on other agricultural crop production or commodity markets (either camelina or other crop markets) and consequently would not result in significant GHG emissions related to indirect land use change. To the extent camelina-based biofuel production decreases the demand for alternative biofuels, some with higher GHG emissions, this biofuel could have some beneficial GHG impact. However, it is uncertain which mix of biofuel sources the market will demand so this potential GHG impact cannot be quantified.

Commenters stated that EPA failed to justify why camelina would be grown on fallow land and thus result in no land use change. In the proposed rule, EPA provided a detailed description of the economics indicating why producers are most likely to grow camelina on land that would otherwise remain fallow. This analysis formed the basis for why it was reasonable and logical for camelina to be grown on acres that would otherwise remain fallow. Comments also indicated that EPA's economic basis for assuming camelina would most likely be grown on fallow land was inadequate, especially if production of camelina was scaled up. However, the comment did not indicate any specific point of error in our economically based analysis. As we described in the proposed rule and discuss below, camelina is currently not a commercially raised crop in the United States, therefore the returns on camelina are expected to be low compared to wheat and other crops with established, commercially traded markets.[15] Therefore, EPA expects that initial production of camelina for biofuel production will be on land with the lowest opportunity cost. Based on this logic, EPA believes camelina will be grown as a rotation crop, as discussed below, on dryland wheat acres replacing a period that the land would otherwise be left fallow.

In the semi-arid regions of the Northern Great Plains, dryland wheat farmers currently leave acres fallow once every three to four years to allow additional moisture and nutrients to accumulate (see Figure 1). Recent research indicates that introducing cool season oilseed crops such as camelina can provide benefits by reducing soil erosion, increasing soil organic matter, and disrupting pest cycles. Although long-term data on the effects of replacing wheat/fallow growing patterns with wheat/oilseed rotations is limited, there is some data that growing oilseeds in drier semi-arid regions year after year can lead to reduced wheat yields.[16] However, the diversification and intensification of wheat-fallow cropping systems can improve the long term economic productivity of wheat acres by increasing soil nitrogen and soil organic carbon pools.[17] In addition, selective breeding is expected to reduce the potential negative impacts on wheat yields.[18] Additional research in this area is needed and if significant negative impacts on crop rotations are determined from camelina grown on fallow acres EPA would take that into account in future analysis.

[14] Fallow land here refers to cropland that is periodically not cultivated.

[15] See Shonnard, D. R., Williams, L., & Kalnes, T. N. 2010. Camelina-Derived Jet Fuel and Diesel: Sustainable Advanced Biodiesel. Environmental Progress & Sustainable Energy, 382–392.

[16] Personal communication with Andrew Lenssen, Department of Agronomy, Iowa State University, April 17, 2012. See also *http://www.ars.usda.gov/is/pr/2010/100413.htm.*

[17] See Sainju, U.M., T. Caesar-Tonthat, A.W. Lenssen, R.G. Evans, and R. Kohlberg. 2007. Long-term tillage and cropping sequence effects on dryland residue and soil carbon fractions. Soil Science Society of America Journal 71: 1730–1739.

[18] See Shonnard *et al.,* 2010; Lafferty *et al.,* 2009.

Figure 1: Examples of Traditional Wheat and Camelina/Wheat Rotations

Example 1: Traditional Winter Wheat/Spring Wheat/Fallow Rotation

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec
Year 0										Winter Wheat Planting		
Year 1								Winter Wheat Harvest				
Year 2				Spring Wheat Planting				Spring Wheat Harvest				
Year 3										Winter Wheat Planting		

Example 2: Winter Wheat/Camelina/Spring Wheat Rotation

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec
Year 0										Winter Wheat Planting		
Year 1								Winter Wheat Harvest				
Year 2				Camelina Planting				Camelina Harvest				
Year 3				Spring Wheat Planting				Spring Wheat Harvest		Winter Wheat Planting		

Shaded cells indicate fallow months

Hatched line cells indicate growing months

As pointed out by commenters, in the future camelina production could expand beyond what is currently assumed in this analysis. However, camelina would most likely not be able to compete with other uses of land until

it becomes a commercial crop with a well-established market value. EPA once again reiterates that we will continue to monitor the growing patterns associated with camelina to determine whether actual production is consistent with the assumptions used in this analysis. Monitoring will be done by tracking the amount of RIN generating camelina fuel produced through the EPA Moderated Transaction System (EMTS). We can compare the amount of RIN generating fuel against expected volumes from fallow acres in conjunction with USDA. Consistent with EPA's approach to all RFS feedstock pathway analyses, we will periodically reevaluate whether our assessment of GHG impacts will need to be updated in the future based on the potential for significant changes in our analyses.

a. Land Availability

USDA estimates that there are approximately 60 million acres of wheat in the U.S.[19] USDA and wheat state cooperative extension reports through 2008 indicate that 83% of US wheat production is under non-irrigated, dryland conditions. Of the approximately 50 million non-irrigated acres, at least 45% are estimated to follow a wheat/fallow rotation. Thus, approximately 22 million acres are potentially suitable for camelina production. However, according to industry projections, only about 9 million of these wheat/fallow acres have the appropriate climate, soil profile, and market access for camelina production.[20] Therefore, our analysis uses the estimate that only 9 million wheat/fallow acres are available for camelina production.

One commenter stated that EPA assumed more than 8 million acres would be used to produce camelina, even though a recent paper stated that only 5 million acres would have the potential to grow camelina in a sustainable manner in a way that would not impact the food supply. This commenter misinterpreted EPA's assumptions. EPA's assessment is based on a three year rotation cycle in which only one third of the 9 million available acres would be fallow in any given year. In other words, EPA assumed only 3 million acres would be planted with camelina in any given year. This number is less than the 5 million acres the Shonnard et. al. paper states would be available annually for camelina planting.

b. Projected Volumes

Based on these projections of land availability, EPA estimates that at current yields (approximately 800 pounds per acre), approximately 100 million gallons (MG) of camelina-based renewable fuels could be produced with camelina grown in rotation with existing crop acres without having direct land use change impacts. Also, since camelina will likely be grown on fallow land and thus not displace any other crop and since camelina currently does not have other significant markets, expanding production and use of camelina for biofuel purposes is not likely to have other agricultural market impacts and therefore, would not result in any significant indirect land use impacts.[21] Yields of camelina are expected to approach the yields of similar oilseed crops over the next few years, as experience with growing camelina improves cultivation practices and the application of existing technologies are more widely adopted.[22] Yields of 1650 pounds per acre have been achieved on test plots, and are in line with expected yields of other oilseeds such as canola/rapeseed. Assuming average US yields of 1650 pounds per acre,[23] approximately 200 MG of camelina-based renewable fuels could be produced on existing wheat/fallow acres. Finally, if investment in new seed technology allows yields to increase to levels assumed by Shonnard et al (3000 pounds per acre), approximately 400 MG of camelina-based renewable fuels could be produced on existing acres.[24] Depending on future crop yields, we project that roughly 100 MG to 400 MG of camelina-based biofuels could be produced on currently fallow land with no impacts on land use.[25]

We also received comments that we overestimated long term camelina yields. The commentors stated that reaching yields of 3000 pounds per acre may be attainable, but previous trials do not suggest that yields could reach this level in ten years. As a point of clarification, we did not assume that yields would need to be 3000 pounds per acre for biodiesel produced from camelina oil to qualify as an advanced biofuel. In the analysis presented below, EPA assumed yields of camelina would be 1650 pounds per acre. Since the use of camelina as a biofuel feedstock in the U.S. is in its infancy, it is reasonable to consider how yields will change over time. Furthermore, jet fuel contracts and the BCAP programs play a very important part in determining the amount of camelina planted, and therefore interest in increasing yields. As the commenter noted, this yield assumption is within the range of potential yields of 330–2400 pounds per acre found in the current literature.

c. Indirect Impacts

Although wheat can in some cases be grown in rotation with other crops such as lentils, flax, peas, garbanzo, and millet, cost and benefit analysis indicate that camelina is most likely to be planted on soil with lower moisture and nutrients where other rotation crops are not viable.[26] Because expected returns on camelina are relatively uncertain, farmers are not expected to grow camelina on land that would otherwise be used to grow cash crops with well established prices and markets. Instead, farmers are most likely to grow camelina on land that would otherwise be left fallow for a season. The opportunity cost of growing camelina on this type of land is much lower. As previously discussed, this type of land represents the 9 million acres currently being targeted for camelina production. Current returns on camelina are relatively low ($13.24 per acre), given average yields of approximately 800 pounds per acre and the current contract price of $0.145 per pound.[27] See Table 1. For comparison purposes, the USDA projections for wheat returns are between $133–$159 per acre between 2010 and 2020.[28] Over time, advancements in seed technology, improvements in planting and harvesting techniques, and higher input usage could significantly increase future camelina yields and returns.

[19] 2009 USDA Baseline. See *http://www.ers.usda.gov/publications/oce091/*.

[20] Johnson, S. and McCormick, M., Camelina: an Annual Cover Crop Under 40 CFR Part 80 Subpart M, Memorandum, dated November 5, 2010.

[21] Wheeler, P. and Guillen-Portal F. 2007. Camelina Production in Montana: A survey study sponsored by Targeted Growth, Inc. and Barkley Ag. Enterprises, LLP.

[22] See Hunter, J and G. Roth. 2010. Camelina Production and Potential in Pennsylvania, Penn State University Agronomy Facts 72. See *http://pubs.cas.psu.edu/freepubs/pdfs/uc212.pdf.*

[23] Ehrensing, D.T. and S.O. Guy. 2008. Oilseed Crops—Camelina. Oregon State Univ. Ext. Serv. EM8953–E. See *http://extension.oregonstate.edu/catalog/pdf/em/em8953-e.pdf*; McVay & Lamb, 2008.

[24] See Shonnard *et al.,* 2010.

[25] This assumes no significant adverse climate impacts on world agricultural yields over the analytical timeframe.

[26] See Lafferty et al, 2009; Shonnard et al, 2010; Sustainable Oils Memo dated November 5, 2010.

[27] Wheeler & Guillen-Portal, 2007.

[28] See *http://www.ers.usda.gov/media/273343/oce121_2_.pdf.*

TABLE 1—CAMELINA COSTS AND RETURNS

Inputs	Rates	2010 Camelina [29]	2022 Camelina [30]	2030 Camelina [31]
Herbicides:				
Glysophate (Fall)	16 oz. ($0.39/oz)	$7.00	$7.00	$7.00
Glysophate (Spring)	16 oz. ($0.39/oz)	$7.00	$7.00	$7.00
Post	12 oz ($0.67/oz)	$8.00	$8.00	$8.00
Seed:				
Camelina seed	$1.44/lb	$5.76 (4 lbs/acre)	$7.20 (5 lbs/acre)	$7.20 (5 lbs/acre)
Fertilizer:				
Nitrogen Fertilizer	$1/pd	$25.00 (25 lb/acre)	$40.00 (40 lb/acre)	$75 (75 lbs/acre)
Phosphate Fertilizer	$1/pd	$15.00 (15 lb/acre)	$15.00 (15 lb/acre)	$15 (15 lb/acre)
Sub-Total		$67.76	$84.20	$119.20
Logistics:				
Planting Trip		$10.00	$10.00	$10.00
Harvest & Hauling		$25.00	$25.00	$25.00
Total Cost		$102.76	$119.20	$154.20
Yields	lb/acre	800	1650	3000
Price	$/lb	$0.145	$0.120	$0.090
Total Revenue at avg prod/pricing		$116.00	$198	$270
Returns		$13.24	$78.80	$115.80

While replacing the fallow period in a wheat rotation is expected to be the primary means by which the majority of all domestic camelina is commercially harvested in the short- to medium-term, in the long term camelina may expand to other regions and growing methods.[32] For example, if camelina production expanded beyond the 9 million acres assumed available from wheat fallow land, it could impact other crops. However, as discussed above this is not likely to happen in the near term due to uncertainties in camelina financial returns. Camelina production could also occur in areas where wheat is not commonly grown. For example, testing of camelina production has occurred in Florida in rotation with kanaf, peanuts, cotton, and corn. However, only 200 acres of camelina were harvested in 2010 in Florida. While Florida acres of camelina are expected to be higher in 2011, very little research has been done on growing camelina in Florida. For example, little is known about potential seedling disease in Florida or how camelina may be affected differently than in colder climates.[33] Therefore, camelina grown outside of a wheat fallow situation was not considered as part of this analysis.

The determination in this final rule is based on our projection that camelina is likely to be produced on what would otherwise be fallow land. However, the rule applies to all camelina regardless of where it is grown. EPA does not expect that significant camelina would be grown on non-fallow land, and small quantities that may be grown elsewhere and used for biofuel production will not significantly impact our analysis.

Furthermore, although we expect most camelina used as a feedstock for renewable fuel production that would qualify in the RFS program would be grown in the U.S., today's rule would apply to qualifying renewable fuel made from camelina grown in any country. For the same reasons that pertain to U.S. production of camelina, we expect that camelina grown in other countries would also be produced on land that would otherwise be fallow and would therefore have no significant land use change impacts. The renewable biomass provisions under the Energy Independence and Security Act would prohibit direct land conversion into new agricultural land for camelina production for biofuel internationally. Additionally, any camelina production on existing cropland internationally would not be expected to have land use impacts beyond what was considered for international soybean production (soybean oil is the expected major feedstock source for US biodiesel fuel production and thus the feedstock of reference for the camelina evaluation). Because of these factors along with the small amounts of fuel potentially coming from other countries, we believe that incorporating fuels produced in other countries will not impact our threshold analysis for camelina-based biofuels.

d. Crop Inputs

For comparison purposes, Table 2 shows the inputs required for camelina production compared to the FASOM agricultural input assumptions for soybeans. Since yields and input assumptions vary by region, a range of values for soybean production are shown in Table 2. The camelina input values in Table 2 represent average values, camelina input values will also vary by region, however, less data is available comparing actual practices by region due to limited camelina production. More information on camelina inputs is available in materials provided in the docket.

[29] See Sustainable Oils Memo dated November 5, 2010.

[30] Based on yields technically feasible. See McVey and Lamb, 2008; Ehrenson & Guy, 2008.

[31] Adapted from Shonnard et al, 2010.

[32] See Sustainable Oils Memo dated November 5, 2010 for a map of the regions of the country where camelina is likely to be grown in wheat fallow conditions.

[33] Wright & Marois, 2011.

TABLE 2—INPUTS FOR CAMELINA AND SOYBEAN PRODUCTION

	Camelina		Soybeans (varies by region)	
	Inputs (per acre)	Emissions (per mmBtu fuel)	Inputs (per acre)	Emissions (per mmBtu fuel)
N_2O	N/A	22 kg CO_2-eq	N/A	9–12 kg CO_2-eq.
Nitrogen Fertilizer	40 lbs	7 kg CO_2-eq	3.5–8.2 lbs	1–3 kg CO_2-eq.
Phosphorous Fertilizer	15 lbs	1 kg CO_2-eq	5.4–21.4 lbs	0–2 kg CO_2-eq.
Potassium Fertilizer	10 lbs	0 kg CO_2-eq	3.1–24.3 lbs	0–2 kg CO_2-eq.
Herbicide	2.75 lbs	3 kg CO_2-eq	0.0–1.3 lbs	0–2 kg CO_2-eq.
Pesticide	0 lbs	0 kg CO_2-eq	0.1–0.8 lbs	0–2 kg CO_2-eq.
Diesel	3.5 gal	5 kg CO_2-eq	3.8–8.9 gal	7–20 kg CO_2-eq.
Gasoline	0 gal	0 kg CO_2-eq	1.6–3.0 gal	3–5 kg CO_2-eq.
Total		39 kg CO_2-eq		21–47 kg CO_2-eq.

Regarding crop inputs per acre, it should be noted that camelina has a higher percentage of oil per pound of seed than soybeans. Soybeans are approximately 18% oil, therefore crushing one pound of soybeans yields 0.18 pounds of oil. In comparison, camelina is approximately 36% oil, therefore crushing one pound of camelina yields 0.36 pounds of oil. The difference in oil yield is taken into account when calculating the emissions per mmBTU included in Table 2. As shown in Table 2, GHG emissions from feedstock production for camelina and soybeans are relatively similar when factoring in variations in oil yields per acre and fertilizer, herbicide, pesticide, and petroleum use.

In summary, EPA concludes that the agricultural inputs for growing camelina are similar to those for growing soy beans, direct land use change impacts are expected to be negligible due to planting on land that would be otherwise fallow, and the limited production and use of camelina indicates no expected impacts on other crops and therefore no indirect land use impacts.

e. Crushing and Oil Extraction

We also looked at the seed crushing and oil extraction process and compared the lifecycle GHG emissions from this stage for soybean oil and camelina oil. As discussed above, camelina seeds produce more oil per pound than soybeans. As a result, the lifecycle GHG emissions associated with crushing and oil extraction are lower for camelina than soybeans, per pound of vegetable oil produced. Table 3 summarizes data on inputs, outputs and estimated lifecycle GHG emissions from crushing and oil extraction. The data on soybean crushing comes from the March 2010 RFS final rule, based on a process model developed by USDA–ARS.[34] The data on camelina crushing is from Shonnard *et al.* (2010).

TABLE 3—COMPARISON OF CAMELINA AND SOYBEAN CRUSHING AND OIL EXTRACTION

Item	Soybeans	Camelina	Units
Material Inputs:			
Beans or Seeds	5.38	2.90	Lbs.
Energy Inputs:			
Electricity	374	47	Btu.
Natural Gas & Steam	1,912	780	Btu.
Outputs:			
Refined vegetable oil	1.00	1.00	Lbs.
Meal	4.08	1.85	Lbs.
GHG Emissions	213	64	gCO2e/lb refined oil.

2. Feedstock Distribution, Fuel Distribution, and Fuel Use

For this analysis, EPA projects that the feedstock distribution emissions will be the same for camelina and soybean oil. To the extent that camelina contains more oil per pound of seed, as discussed above, the energy needed to move the camelina would be lower than soybeans per gallon of fuel produced. To the extent that camelina is grown on more disperse fallow land than soybean and would need to be transported further, the energy needed to move the camelina could be higher than soybean. We believe the assumption to use the same distribution impacts for camelina as soybean is a reasonable estimate of the GHG emissions from camelina feedstock distribution. In addition, the final fuel produced from camelina is also expected to be similar in composition to the comparable fuel produced from soybeans, therefore we are assuming GHG emissions from the distribution and use of fuels made from camelina will be the same as emissions of fuel produced from soybeans.

3. Fuel Production

There are two main fuel production processes used to convert camelina oil into fuel. The trans-esterification process produces biodiesel and a glycerin co-product. The hydrotreating process can be configured to produce renewable diesel either primarily as diesel fuel (including heating oil) or primarily as jet fuel. Possible additional products from hydrotreating include naphtha LPG, and propane. Both processes and the fuels produced are described in the following sections. Both processes use camelina oil as a feedstock and camelina crushing is also included in the analysis.

[34] A. Pradhan, D.S. Shrestha, A. McAloon, W. Yee, M. Haas, J.A. Duffield, H. Shapouri, September 2009, ''Energy Life-Cycle Assessment of Soybean Biodiesel'', United States Department of Agriculture, Office of the Chief Economist, Office of Energy Policy and New Uses, Agricultural Economic Report Number 845.

a. Biodiesel

For this analysis, we assumed the same biodiesel production facility designs and conversion efficiencies as modeled for biodiesel produced from soybean oil and canola/rapeseed oil. Camelina oil biodiesel is produced using the same methods as soybean oil biodiesel, therefore plant designs are assumed to not significantly differ between fuels made from these feedstocks. As was the case for soybean oil biodiesel, we have not projected in our assessment of camelina oil biodiesel any significant improvements in plant technology. Unanticipated energy saving improvements would further improve GHG performance of the fuel pathway.

The glycerin produced from camelina biodiesel production is chemically equivalent to the glycerin produced from the existing biodiesel pathways (*e.g.,* based on soy oil) that were analyzed as part of the March 2010 RFS final rule. Therefore the same co-product credit would apply to glycerin from camelina biodiesel as glycerin produced in the biodiesel pathways modeled for the March 2010 RFS final rule. The assumption is that the GHG reductions associated with the replacement of residual oil with glycerin on an energy equivalent basis represents an appropriate midrange co-product credit of biodiesel produced glycerin.

As part of our RFS2 proposal, we assumed the glycerin would have no value and would effectively receive no co-product credits in the soy biodiesel pathway. We received numerous comments, however, asserting that the glycerin would have a beneficial use and should generate co-product benefits. Therefore, the biodiesel glycerin co-product determination made as part of the March 2010 RFS final rule took into consideration the possible range of co-product credit results. The actual co-product benefit will be based on what products are replaced by the glycerin and what new uses develop for the co-product glycerin. The total amount of glycerin produced from the biodiesel industry will actually be used across a number of different markets with different GHG impacts. This could include for example, replacing petroleum glycerin, replacing fuel products (residual oil, diesel fuel, natural gas, etc.), or being used in new products that don't have a direct replacement, but may nevertheless have indirect effects on the extent to which existing competing products are used. The more immediate GHG reduction credits from glycerin co-product use could range from fairly high reduction credits if petroleum glycerin is replaced to lower reduction credits if it is used in new markets that have no direct replacement product, and therefore no replaced emissions.

EPA does not have sufficient information (and received no relevant comments as part of the March 2010 RFS rule) on which to allocate glycerin use across the range of likely uses. Therefore, EPA believes that the approach used in the RFS of picking a surrogate use for modeling purposes in the mid-range of likely glycerin uses, and the GHG emissions results tied to such use, is reasonable. The replacement of an energy equivalent amount of residual oil is a simplifying assumption determined by EPA to reflect the mid-range of possible glycerin uses in terms of GHG credits. EPA believes that it is appropriately representative of GHG reduction credit across the possible range without necessarily biasing the results toward high or low GHG impact. Given the fundamental difficulty of predicting possible glycerin uses and impacts of those uses many years into the future under evolving market conditions, EPA believes it is reasonable to use the more simplified approach to calculating co-product GHG benefits associated with glycerin production at this time. EPA will continue to evaluate the co-product credit associated with glycerine production in future rulemakings.

Given the fact that GHG emissions from camelina-based biodiesel would be similar to the GHG emissions from soybean-based biodiesel at all stages of the lifecycle but would not result in land use changes as was the case for soy oil used as a feedstock, we believe biodiesel from camelina oil will also meet the 50% GHG emissions reduction threshold to qualify as a biomass based diesel and an advanced fuel. Therefore, EPA is including biodiesel produced from camelina oil under the same pathways for which biodiesel made from soybean oil qualifies under the March 2010 RFS final rule.

b. Renewable Diesel (Including Jet Fuel and Heating Oil), Naphtha, and LPG

The same feedstocks currently used for biodiesel production can also be used in a hydrotreating process to produce a slate of products, including diesel fuel, heating oil (defined as No. 1 or No. 2 diesel), jet fuel, naphtha, LPG, and propane. Since the term renewable diesel is defined to include the products diesel fuel, jet fuel and heating oil, the following discussion uses the term renewable diesel to also include diesel fuel, jet fuel and heating oil. The yield of renewable diesel is relatively insensitive to feedstock source.[35] While any propane produced as part of the hydrotreating process will most likely be combusted within the facility for process energy, the other co-products that can be produced (*i.e.,* renewable diesel, naphtha, LPG) are higher value products that could be used as transportation fuels or, in the case of naphtha, a blendstock for production of transportation fuel. The hydrotreating process maximized for producing a diesel fuel replacement as the primary fuel product requires more overall material and energy inputs than transesterification to produce biodiesel, but it also results in a greater amount of other valuable co-products as listed above. The hydrotreating process can also be maximized for jet fuel production which requires even more process energy than the process optimized for producing a diesel fuel replacement, and produces a greater amount of co-products per barrel of feedstock, especially naphtha.

Producers of renewable diesel from camelina have expressed interest in generating RINs under the RFS program for the slate of products resulting from the hydrotreating process. Our lifecycle analysis accounts for the various uses of the co-products. There are two main approaches to accounting for the co-products produced, the allocation approach, and the displacement approach. In the allocation approach all the emissions from the hydrotreating process are allocated across all the different co-products. There are a number of ways to do this but since the main use of the co-products would be to generate RINs as a fuel product we allocate based on the energy content of the co-products produced. In this case, emissions from the process would be allocated equally to all the Btus produced. Therefore, on a per Btu basis all co-products would have the same emissions. The displacement approach would attribute all of the emissions of the hydrotreating process to one main product and then account for the emission reductions from the other co-products displacing alternative product production. For example, if the hydrotreating process is configured to maximize diesel fuel replacement production, all of the emissions from the process would be attributed to diesel fuel, but we would then assume the other co-products were displacing

[35] Kalnes, T., N., McCall, M., M., Shonnard, D., R., 2010. Renewable Diesel and Jet-Fuel Production from Fats and Oils. Thermochemical Conversion of Biomass to Liquid Fuels and Chemicals, Chapter 18, p. 475.

alternative products, for example, naphtha would displace gasoline, LPG would displace natural gas, etc. This assumes the other alternative products are not produced or used, so we would subtract the emissions of gasoline production and use, natural gas production and use, etc. This would show up as a GHG emission credit associated with the production of diesel fuel replacement.

To account for the case where RINs are generated for the jet fuel, naphtha and LPG in addition to the diesel replacement fuel produced, we would not give the diesel replacement fuel a displacement credit for these co-products. Instead, the lifecycle GHG emissions from the fuel production processes would be allocated to each of the RIN-generating products on an energy content basis. This has the effect of tending to increase the fuel production lifecycle GHG emissions associated with the diesel replacement fuel because there are less co-product displacement credits to assign than would be the case if RINs were not generated for the co-products.[36] On the other hand, the upstream lifecycle GHG emissions associated with producing and transporting the plant oil feedstocks will be distributed over a larger group of RIN-generating products. Assuming each product (except propane) produced via the camelina oil hydrotreating process will generate RINs results in higher lifecycle GHG emissions for diesel fuel replacement as compared to the case where the co-products are not used to generate RINs. This general principle is also true when the hydrotreating process is maximized for jet fuel production. As a result, the worst GHG performance (*i.e.,* greatest lifecycle GHG emissions) for diesel replacement fuel and jet fuel produced from camelina oil via hydrotreating will occur when all of the co-products are RIN-generating (we assume propane will be used for process energy). Thus, if these fuels meet the 50% GHG reduction threshold for biomass based diesel or advanced biofuel when co-products are RIN-generating, they will also do so in the case when RINs are not generated for co-products.

We have evaluated information about the lifecycle GHG emissions associated with the hydrotreating process which can be maximized for jet fuel or diesel replacement fuel production. Our evaluation considers information published in peer-reviewed journal articles and publicly available literature (Kalnes et al., 2010, Pearlson, M., N., 2011,[37] Stratton *et al.,* 2010, Huo *et al.,* 2008 [38]). Our analysis of GHG emissions from the hydrotreating process is based on the mass and energy balance data in Pearlson (2011) which analyzes a hydrotreating process maximized for diesel replacement fuel production and a hydrotreating process maximized for jet fuel production.[39] This data is summarized in Table 4.

TABLE 4—HYDROTREATING PROCESSES TO CONVERT CAMELINA OIL INTO DIESEL REPLACEMENT FUEL AND JET FUEL[40]

	Maximized for diesel fuel production	Maximized for jet fuel production	Units (per gallon of fuel produced)
Inputs:			
Refined camelina oil	9.56	12.84	Lbs.
Hydrogen	0.04	0.08	Lbs.
Electricity	652	865	Btu.
Natural Gas	23,247	38,519	Btu.
Outputs:			
Diesel Fuel	123,136	55,845	Btu.
Jet fuel	23,197	118,669	Btu.
Naphtha	3,306	17,042	Btu.
LPG	3,084	15,528	Btu.
Propane	7,454	9,881	Btu.

Table 5 compares lifecycle GHG emissions from oil extraction and fuel production for soybean oil biodiesel and for camelina-based diesel and jet fuel. The lifecycle GHG estimates for camelina oil diesel and jet fuel are based on the input/output data summarized in Table 3 (for oil extraction) and Table 4 (for fuel production). We assume that the propane co-product does not generate RINs; instead, it is used for process energy displacing natural gas. We also assume that the naphtha is used as blendstock for production of transportation fuel to generate RINs. In this case we assume that RINs are generated for the use of LPG in a way that meets the EISA definition of transportation fuel, for example it could be used in a nonroad vehicle. The lifecycle GHG results in Table 5 represent the worst case scenario (*i.e.,* highest GHG emissions) because all of the eligible co-products are used to generate RINs. This is because, as discussed above, lifecycle GHG emissions per Btu of diesel or jet fuel would be lower if the naphtha or LPG is not used to generate RINs and is instead used for process energy displacing fossil fuel such as natural gas. Supporting information for the values in Table 5, including key assumptions and data, is provided through the docket.[41] The key assumptions and data discussed in the docket include the emissions factors for natural gas, hydrogen and grid average electricity, and the energy allocation and displacement credits given to co-products. These data and assumptions are based on the approach taken in the March 2010 RFS rule, as explained further below.

[36] For a similar discussion see page 46 of Stratton, R.W., Wong, H.M., Hileman, J.I. 2010. Lifecycle Greenhouse Gas Emissions from Alternative Jet Fuels. PARTNER Project 28 report. Version 1.1. PARTNER–COE–2010–001. June 2010, *http://web.mit.edu/aeroastro/partner/reports/proj28/partner-proj28-2010-001.pdf.*

[37] Pearlson, M., N. 2011. A Techno-Economic and Environmental Assessment of Hydroprocessed Renewable Distillate Fuels.

[38] Huo, H., Wang., M., Bloyd, C., Putsche, V., 2008. Life-Cycle Assessment of Energy and Greenhouse Gas Effects of Soybean-Derived Biodiesel and Renewable Fuels. Argonne National Laboratory. Energy Systems Division. ANL/ESD/08–2. March 12, 2008.

[39] We have also considered data submitted by companies involved in the hydrotreating industry which is claimed as confidential business information (CBI). The conclusions using the CBI data are consistent with the analysis presented here.

[40] Based on Pearlson (2011), Table 3.1 and Table 3.2.

[41] See for example the spreadsheet with lifecycle GHG emissions calculations titled ''Final Camelina Calculations for Docket'' with document number EPA–HQ–OAR–2011–0542–0046.

TABLE 5—FUEL PRODUCTION LIFECYCLE GHG EMISSIONS

[kgCO2e/mmBtu) [42]

Feedstock	Production process	RIN-Generating products	Other co-products	Oil extraction	Processing	Total
Soybean Oil	Trans-Esterification	Biodiesel	Glycerin	14	(1)	13
Camelina Oil	Trans-Esterification	Biodiesel	Glycerin	4	(1)	3
Camelina Oil	Hydrotreating Maximized for Diesel.	Diesel Jet Fuel. Naphtha. LPG.	Propane	4	8	12
Camelina Oil	Hydrotreating Maximized for Jet Fuel.	Diesel Fuel Jet Fuel. Naphtha. LPG.	Propane	4	11	14

As discussed above, for a process that produces more than one RIN-generating output (*e.g.,* the hydrotreating process summarized in Table 5 which produces diesel replacement fuel, jet fuel, and naphtha) we allocate lifecycle GHG emissions to the RIN generating products on an energy equivalent basis. We then normalize the allocated lifecycle GHG emissions per mmBtu of each fuel product. Therefore, each RIN-generating product from the same process will be assigned equal lifecycle GHG emissions per mmBtu from fuel processing. For example, based on the lifecycle GHG estimates in Table 5 for the hydrotreating process maximized to produce jet fuel, the jet fuel and the naphtha both have lifecycle GHG emissions of 14 kgCO2e/mmBtu. For the same reasons, the lifecycle GHG emissions from the jet fuel and naphtha will stay equivalent if we consider upstream GHG emissions, such as emissions associated with camelina cultivation and harvesting. Lifecycle GHG emissions from fuel distribution and use could be somewhat different for the jet fuel and naphtha, but since these stages produce a relatively small share of the emissions related to the full fuel lifecycle, the overall difference will be quite small.

Given that GHG emissions from camelina oil would be similar to the GHG emissions from soybean oil at all stages of the lifecycle but would not result in land use change emissions (soy oil feedstock did have a significant land use change impact but still met a 50% GHG reduction threshold), and considering differences in process emissions between soybean biodiesel and camelina-based renewable diesel, we conclude that renewable diesel from camelina oil will also meet the 50% GHG emissions reduction threshold to qualify as biomass based diesel and advanced fuel. Although some of the potential configurations result in fuel production GHG emissions that are higher than fuel production GHG emissions for soybean oil biodiesel, land use change emissions account for approximately 80% of the soybean oil to biodiesel lifecycle GHGs. Since camelina is assumed not to have land use change emissions, our analysis shows that camelina renewable diesel will qualify for advanced renewable fuel and biomass-based diesel RINs even for the cases with the highest lifecycle GHGs (*e.g.,* when all of the co-products are used to generate RINs.) Because the lifecycle GHG emissions for RIN-generating co-products are very similar, we can also conclude renewable gasoline blendstock and LPG produced from camelina oil will also meet the 50% GHG emissions reduction threshold. If the facility does not actually generate RINs for one or more of these co-products, we estimate that the lifecycle GHG emissions related to the RIN-generating products would be lower, thus renewable diesel (which includes diesel fuel, jet fuel, and heating oil) from camelina would still meet the 50% emission reduction threshold.

4. Summary

Current information suggests that camelina will be produced on land that would otherwise remain fallow. Therefore, increased production of camelina-based renewable fuel is not expected to result in significant land use change emissions; however, the agency will continue to monitor volumes through EMTS to verify this assumption. For the purposes of this analysis, EPA is projecting there will be no land use emissions associated with camelina production for use as a renewable fuel feedstock.

However, while production of camelina on acres that would otherwise remain fallow is expected to be the primary means by which the majority of all camelina is commercially harvested in the short- to medium- term, in the long term camelina may expand to other growing methods and lands if demand increases substantially beyond what EPA is currently predicting. While the impacts are uncertain, there are some indications demand could increase significantly. For example, camelina is included under USDA's Biomass Crop Assistance Program (BCAP) and there is growing support for the use of camelina oil in producing drop-in alternative aviation fuels. EPA plans to monitor, through EMTS and in collaboration with USDA, the expansion of camelina production to verify whether camelina is primarily grown on existing acres once camelina is produced at larger-scale volumes. Similarly, we will consider market impacts if alternative uses for camelina expand significantly beyond what was described in the above analysis. Just as EPA plans to periodically review and revise the methodology and assumptions associated with calculating the GHG emissions from all renewable fuel feedstocks, EPA expects to review and revise as necessary the analysis of camelina in the future.

Taking into account the assumption of no land use change emissions when camelina is used to produce renewable fuel, and considering that other sources of GHG emissions related to camelina biodiesel or renewable diesel production have comparable GHG emissions to biodiesel from soybean oil, we have determined that camelina-based biodiesel and renewable diesel should be treated in the same manner as soy-based biodiesel and renewable diesel in qualifying as biomass-based diesel and advanced biofuel for purposes of RIN generation, since the GHG emission performance of the

[42] Lifecycle GHG emissions are normalized per mmBtu of RIN-generating fuel produced. Totals may not be the sum of the rows due to rounding error. Parentheses indicate negative numbers. Process emissions for biodiesel production are negative because they include the glycerin offset credit.

camelina-based fuels will be at least as good and in some respects better than that modeled for fuels made from soybean oil. EPA found as part of the Renewable Fuel Standard final rulemaking that soybean biodiesel resulted in a 57% reduction in GHG emissions compared to the baseline petroleum diesel fuel. Furthermore, approximately 80% of the lifecycle impacts from soybean biodiesel were from land use change emissions which are assumed to be not significant for the camelina pathway considered. Thus, EPA is including camelina oil as a potential feedstock under the same biodiesel and renewable diesel (which includes diesel fuel, jet fuel, and heating oil) pathways for which soybean oil currently qualifies. We are also including a pathway for naphtha and LPG produced from camelina oil through hydrotreating. This is based on the fact that our analysis shows that even when all of the co-products are used to generate RINs the lifecycle GHG emissions for RIN-generating co-products including diesel replacement fuel, jet fuel, naphtha and LPG produced from camelina oil will all meet the 50% GHG emissions reduction threshold.

We are also clarifying that two existing pathways for RIN generation in the RFS regulations that list ''renewable diesel'' as a fuel product produced through a hydrotreating process include jet fuel. This applies to two pathways in Table 1 to § 80.1426 of the RFS regulations which both list renewable diesel made from soy bean oil, oil from annual covercrops, algal oil, biogenic waste oils/fats/greases, or non-food grade corn oil using hydrotreating as a process. If parties produce jet fuel from the hydrotreating process and co-process renewable biomass and petroleum they can generate advanced biofuel RINs (D code 5) for the jet fuel produced. If they do not co-process renewable biomass and petroleum they can generate biomass-based diesel RINs (D code 4) for the jet fuel produced.

§ 80.1401 of the RFS regulations currently defines non-ester renewable diesel as a fuel that is not a mono-alkyl ester and which can be used in an engine designed to operate on conventional diesel fuel or be heating oil or jet fuel. The reference to jet fuel in this definition was added by direct final rule dated May 10, 2010. Table 1 to § 80.1426 identifies approved fuel pathways by fuel type, feedstock source and fuel production processes. The table, which was largely adopted as part of the March 26, 2010 RFS final rule, identifies jet fuel and renewable diesel as separate fuel types. Accordingly, in light of the revised definition of renewable diesel enacted after the RFS2 rule, there is ambiguity regarding the extent to which references in Table 1 to ''renewable diesel'' include jet fuel.

The original lifecycle analysis for the renewable diesel from hydrotreating pathways listed in Table 1 to § 80.1426 was not based on producing jet fuel but rather other transportation diesel fuel products, namely a diesel fuel replacement. As discussed above, the hydrotreating process can produce a mix of products including jet fuel, diesel, naphtha, LPG and propane. Also, as discussed, there are differences in the process configured for maximum jet fuel production vs. the process maximized for diesel fuel production and the lifecycle results vary depending on what approach is used to consider co-products (*i.e.,* the allocation or displacement approach).

In cases where there are no pathways for generating RINs for the co-products from the hydrotreating process it would be appropriate to use the displacement method for capturing the credits of co-products produced. This is the case for most of the original feedstocks included in Table 1 to § 80.1426.[43] As was discussed previously, if the displacement approach is used when jet fuel is the primary product produced it results in lower emissions than the production maximized for diesel fuel production. Therefore, since the hydrotreating process maximized for diesel fuel meets the 50% lifecycle GHG threshold for the feedstocks in question, the process maximized for jet fuel would also qualify.

Thus, we are interpreting the references to ''renewable diesel'' in Table 1 to include jet fuel, consistent with our regulatory definition of ''non-ester renewable diesel,'' since doing so clarifies the existing regulations while ensuring that Table 1 to § 80.1426 appropriately identifies fuel pathways that meet the GHG reduction thresholds associated with each pathway.

We note that although the definition of renewable diesel includes jet fuel and heating oil, we have also listed in Table 1 of section 80.1426 of the RFS regulations jet fuel and heating oil as specific co-products in addition to listing renewable diesel to assure clarity. This clarification also pertains to all the feedstocks already included in Table 1 for renewable diesel.

[43] The exception is renewable gasoline blendstock produced from waste categories, but these would pass the lifecycle thresholds regardless of the allocation approach used given their low feedstock GHG impacts.

B. Lifecycle Greenhouse Gas Emissions Analysis for Ethanol, Diesel, Jet Fuel, Heating Oil, and Naphtha Produced From Energy Cane

For this rulemaking, EPA considered the lifecycle GHG impacts of a new type of high-yielding perennial grass similar in cellulosic composition to switchgrass and comparable in status as an emerging energy crop. The grass considered in this rulemaking is energy cane, which is defined as a complex hybrid in the Saccharum genus that has been bred to maximize cellulosic rather than sugar content.

As discussed above, in response to the proposed rule, EPA received comments highlighting the concern that by approving certain new feedstock types under the RFS program, EPA would be encouraging their introduction or expanded planting without considering their potential impact as invasive species.[44]

As described in the previous section on camelina, the information before us does not raise significant concerns about the threat of invasiveness and related GHG emissions for energy cane. Energy cane is generally a hybrid of *Saccharum officinarum* and *Saccharum spontaneum*, though other species such as *Saccharum barberi* and *Saccharum sinense* have been used in the development of new cultivars.[45] Given the fact that *S. spontaneum* is listed on the Federal Noxious Weed List, this rulemaking does not allow for the inclusion of *S. spontaneum* in the definition of energy cane. However, hybrids derived from *S. spontaneum* that have been developed and publicly released by USDA are included in this definition of the energy cane feedstock. USDA's Agricultural Research Service has developed strains of energy cane that strive to maximize fiber content and minimize invasive traits. Therefore, we believe that the production of cultivars of energy cane that were developed by USDA are unlikely to spread beyond the intended borders in which it is grown, which is consistent with the assumption in EPA's lifecycle analysis that significant expenditures of energy or other sources of GHGs will not be required to remediate the spread of this feedstock from the specific locations where it is grown as a renewable fuel

[44] Comment submitted by Jonathan Lewis, Senior Counsel, Climate Policy, Clean Air Task Force *et al.,* dated February 6, 2012. Document ID # EPA–HQ–OAR–2011–0542–0118.

[45] See *https://www.crops.org/publications/jpr/abstracts/2/3/211?access=0&view=pdf* and *http://www.cpact.embrapa.br/eventos/2010/simposio_agroenergia/palestras/10_terca/Tarde/USA/4%20%20%208-10-2010%20Cold%20Tolerance.pdf.*

feedstock for the RFS program. Therefore, we are finalizing the energy cane pathway in this rule based on our lifecycle analysis discussed below.

In the proposed and final RFS rule, EPA analyzed the lifecycle GHG impacts of producing and using cellulosic ethanol and cellulosic Fischer-Tropsch diesel from switchgrass. The midpoint of the range of switchgrass results showed a 110% GHG reduction (range of 102%–117%) for cellulosic ethanol (biochemical process), a 72% (range of −64% to −79%) reduction for cellulosic ethanol (thermochemical process), and a 71% (range of −62% to −77%) reduction for cellulosic diesel (F–T process) compared to the petroleum baseline. In the RFS final rule, we indicated that some feedstock sources can be determined to be similar enough to those modeled that the modeled results could reasonably be extended to these similar feedstock types. For instance, information on miscanthus indicated that this perennial grass will yield more feedstock per acre than the modeled switchgrass feedstock without additional inputs with GHG implications (such as fertilizer). Therefore in the final rule EPA concluded that since biofuel made from the cellulosic biomass in switchgrass was found to satisfy the 60% GHG reduction threshold for cellulosic biofuel, biofuel produced from the cellulosic biomass in miscanthus would also comply. In the final rule we included cellulosic biomass from switchgrass and miscanthus as eligible feedstocks for the cellulosic biofuel pathways included in Table 1 to § 80.1426.

We did not include other perennial grasses such as energy cane as feedstocks for the cellulosic biofuel pathways in Table 1 at that time, since we did not have sufficient time to adequately consider them. Based in part on additional information received through the petition process for EPA approval of the energy cane pathway, EPA has evaluated energy cane and is now including it as a feedstock in Table 1 to § 80.1426 as approved pathways for cellulosic biofuel pathways.

As described in detail in the following sections of this preamble, because of the similarity of energy cane to switchgrass and miscanthus, and because crop production input emissions (*e.g.,* diesel and pesticide emissions) are generally a small fraction of the overall lifecycle GHG emissions (representing approximately 1% of total emissions for switchgrass), EPA believes that new agricultural sector modeling is not needed to analyze energy cane. We have instead relied upon the switchgrass analysis to assess the relative GHG impacts of biofuel produced from energy cane. As with the switchgrass analysis, we have attributed all land use impacts and resource inputs from use of these feedstocks to the portion of the fuel produced that is derived from the cellulosic components of the feedstocks. Based on this analysis and currently available information, we conclude that biofuel (ethanol, cellulosic diesel, jet fuel, heating oil and naphtha) produced from the cellulosic biomass of energy cane has similar lifecycle GHG impacts to switchgrass biofuel and meets the 60% GHG reduction threshold required for cellulosic biofuel.

1. Feedstock Production and Distribution

For the purposes of this rulemaking, energy cane refers to varieties of perennial grasses in the *Saccharum* genus which are intentionally bred for high cellulosic biomass productivity but have characteristically low sugar content making them less suitable as a primary source of sugar as compared to other varieties of grasses commonly known as ''sugarcane'' in the Saccharum genus. Energy cane varieties developed to date have low tolerance for cold temperatures but grow well in warm, humid climates. Energy cane originated from efforts to improve disease resistance and hardiness of commercial sugarcane by crossbreeding commercial and wild sugarcane strains. Certain higher fiber, lower sugar varieties that resulted were not suitable for commercial sugar production, and are now being developed as a high-biomass energy crop. There is currently no commercial production of energy cane. Current plantings are mainly limited to research field trials and small demonstrations for bioenergy purposes. However, based in part on discussions with industry, EPA anticipates continued development of energy cane particularly in the south-central and southeastern United States due to its high yields in these regions.

a. Crop Yields

For the purposes of analyzing the GHG emissions from energy cane production, EPA examined crop yields and production inputs in relation to switchgrass to assess the relative GHG impacts. Current national yields for switchgrass are approximately 4.5 to 5 dry tons per acre. Average energy cane yields exceed switchgrass yields in both unfertilized and fertilized trails conducted in the southern United States. Unfertilized yields are around 7.3 dry tons per acre while fertilized trials show energy cane yields range from approximately 11 to 20 dry tons per acre.[46] [47] Until recently there have been few efforts to improve energy cane yields, but several energy cane development programs are now underway to further increase its biomass productivity. In general, energy cane will have higher yields than switchgrass, so from a crop yield perspective, the switchgrass analysis would be a conservative estimate when comparing against the energy cane pathway.

Furthermore, EPA's analysis of switchgrass for the RFS rulemaking assumed a 2% annual increase in yield that would result in an average national yield of 6.6 dry tons per acre in 2022. EPA anticipates a similar yield improvement for energy cane due to their similarity as perennial grasses and their comparable status as energy crops in their early stages of development. Given this, our analysis assumes an average energy cane yield of 19 dry tons per acre in the southern United States by 2022.[48] The ethanol yield for all of the grasses is approximately the same so the higher crop yields for energy cane result directly in greater ethanol production compared to switchgrass per acre of production.

Based on these yield assumptions, in areas with suitable growing conditions, energy cane would require approximately 26% to 47% of the land area required by switchgrass to produce the same amount of biomass due to higher yields. Even without yield growth assumptions, the currently higher crop yield rates means the land use required for energy cane would be lower than for switchgrass. Therefore less crop area would be converted and displaced resulting in smaller land-use change GHG impacts than that assumed for switchgrass to produce the same amount of fuel. Furthermore, we believe energy cane will have a similar impact on international markets as assumed for switchgrass. Like switchgrass, energy cane is not expected to be traded internationally and its impacts on other crops are expected to be limited.

b. Land Use

In EPA's March 2010 RFS analysis, switchgrass plantings displaced primarily soybeans and wheat, and to a lesser extent hay, rice, sorghum, and cotton. Energy cane, with production focused in the southern United States, is

[46] See Bischoff, K.P., Gravois, K.A., Reagan, T.E., Hoy, J.W., Kimbeng, C.A., LaBorde, C.M., Hawkins, G.L. *Plant Regis.* 2008, 2, 211–217.

[47] See Hale, A.L. *Sugar Bulletin,* 2010, 88, 28–29.

[48] These yields assume no significant adverse climate impacts on world agricultural yields over the analytical timeframe.

likely to be grown on land once used for pasture, rice, commercial sod, cotton or alfalfa, which would likely have less of an international indirect impact than switchgrass because some of those commodities are not as widely traded as soybeans or wheat. Given that energy cane will likely displace the least productive land first, EPA concludes that the land use GHG impact for energy cane per gallon should be no greater and likely less than estimated for switchgrass.

Considering the total land potentially impacted by all the new feedstocks included in this rulemaking would not impact these conclusions (including the camelina discussed in the previous section and energy cane considered here). As discussed previously, the camelina is expected to be grown on fallow land in the Northwest, while energy cane is expected to be grown mainly in the south on existing cropland or pastureland. In the switchgrass ethanol scenario done for the Renewable Fuel Standard final rulemaking, total cropland acres increases by 4.2 million acres, including an increase of 12.5 million acres of switchgrass, a decrease of 4.3 million acres of soybeans, a 1.4 million acre decrease of wheat acres, a decrease of 1 million acres of hay, as well as decreases in a variety of other crops. Given the higher yields of the energy cane considered here compared to switchgrass, there would be ample land available for production without having any adverse impacts beyond what was considered for switchgrass production. This analysis took into account the economic conditions such as input costs and commodity prices when evaluating the GHG and land use change impacts of switchgrass.

One commenter stated that by assuming no land use change for energy cane and other feedstocks, the Agency may have underestimated the increase in GHG emissions that could result from breaking new land. According to the commenter, EPA assumed that these feedstocks will be grown on the least productive land without citing any specific models or studies.

The commenter appears to have misinterpreted EPA's analysis. EPA did not assume these crops would be grown on fallow acres, nor did EPA assume that switchgrass would only be produced on the least productive lands. EPA assumed these crops would be grown on acres similar to switchgrass, and therefore applied the land use change impacts of switchgrass analyzed in the final RFS rule. In the final RFS, EPA provided detailed information on the types of crops (*e.g.,* wheat) that would be displaced by dedicated switchgrass. This analysis took into account the economic conditions such as input costs and commodity prices when evaluating the GHG and land use change impacts of switchgrass.[49]

[49] See Final Regulatory Impact Analysis Chapter 2, February 2010.

c. Crop Inputs and Feedstock Transport

EPA also assessed the GHG impacts associated with planting, harvesting, and transporting energy cane in comparison to switchgrass. Table 6 shows the assumed 2022 commercial-scale production inputs for switchgrass (used in the RFS rulemaking analysis), average energy cane production inputs (USDA projections and industry data) and the associated GHG emissions.

Available data gathered by EPA suggest that energy cane requires on average less nitrogen, phosphorous, potassium, and pesticide than switchgrass per dry ton of biomass, but more herbicide, lime, diesel, and electricity per unit of biomass.

This assessment assumes production of energy cane uses electricity for irrigation given that growers will likely irrigate when possible to improve yields. Irrigation rates will vary depending on the timing and amount of rainfall, but for the purpose of estimating GHG impacts of electricity use for irrigation, we assumed a rate similar to what we assumed for other irrigated crops in the Southwest, South Central, and Southeast as shown in Table 6.

Applying the GHG emission factors used in the March 2010 RFS final rule, energy cane production results in slightly higher GHG emissions relative to switchgrass production (an increase of approximately 4 kg CO_2eq/mmbtu).

Table 6: Production Inputs and GHG Emissions for Switchgrass and Energy Cane (Biochemical Ethanol), 2022

		Switchgrass				Energy Cane			
	Emission Factors	Inputs (per dry ton of biomass)		Emissions (per mmBtu fuel)		Inputs (per dry ton of biomass)		Emissions (per mmBtu fuel)	
Nitrogen Fertilizer	3,29 $kgCO_2e$/ton of nitrogen	15.2	lbs	3.6	$kgCO_2e$	8.4	lbs	2	$kgCO_2e$
N_2O	N/A	N/A		7.6	$kgCO_2e$	N/A		5.9	$kgCO_2e$
Phosphorus Fertilizer	1,12 $kgCO_2e$ /ton of phosphate	6.1	lbs	0.5	$kgCO_2e$	3.2	lbs	0.3	$kgCO_2e$
Potassium Fertilizer	743 $kgCO_2e$ /ton of potassium	6.1	lbs	0.3	$kgCO_2e$	4.2	lbs	0.2	$kgCO_2e$
Herbicide	23,45 $kgCO_2e$ /tons of herbicide	0.002	lbs	0.003	$kgCO_2e$	1.0	lbs	1.8	$kgCO_2e$
Insecticide (average across regions)	27,22 $kgCO_2e$ /tons of pesticide	0.025	lbs	0.04	$kgCO_2e$	0	lbs	0	$kgCO_2e$
Lime	408 $kgCO_2e$ /ton of lime	0	lbs	0	$kgCO_2e$	104.7	lbs	3.1	$kgCO_2e$
Diesel	97 $kgCO_2e$ /mmBtu diesel	0.4	gal	0.8	$kgCO_2e$	1.3	gal	2.4	$kgCO_2e$
Electricity (irrigation)	220 $kgCO_2e$ /mmBtu	0	kWh	0	$kgCO_2e$	14.7	kWh	1.6	$kgCO_2e$
Total Emissions				13	$kgCO_2e$ / mmBtu			17	$kgCO_2e$ / mmBtu

Assumes 2022 switchgrass yield of 6.59 dry tons/acre and 92.3 gal ethanol/dry ton and 2022 energy cane yield of 19.1 dry tons/acre and 92 gal ethanol/dry ton.

More detail on calculations and assumptions is included in materials to the docket.

GHG emissions associated with distributing energy cane are expected to be similar to EPA's estimates for switchgrass feedstock because they are all herbaceous agricultural crops requiring similar transport, loading,

unloading, and storage regimes. Our analysis therefore assumes the same GHG impact for feedstock distribution as we assumed for switchgrass, although distributing energy cane could be less GHG intensive because higher yields could translate to shorter overall hauling distances to storage or biofuel production facilities per gallon or Btu of final fuel produced.

2. Fuel Production, Distribution, and Use

Energy cane is suitable for the same conversion processes as other cellulosic feedstocks, such as switchgrass and corn stover. Currently available information on energy cane composition shows that hemicellulose, cellulose, and lignin content are comparable to other crops that qualify under the RFS regulations as feedstocks for the production of cellulosic biofuels. Based on this similar composition as well as conversion yield data provided by industry, we applied the same production processes that were modeled for switchgrass in the final RFS rule (biochemical ethanol, thermochemical ethanol, and Fischer-Tropsch (F–T) diesel [50]) to energy cane. We assumed the GHG emissions associated with producing biofuels from energy cane are similar to what we estimated for switchgrass and other cellulosic feedstocks. EPA also assumes that the distribution and use of biofuel made from energy cane will not differ significantly from similar biofuel produced from other cellulosic sources. As was done for the switchgrass case, this analysis assumes energy grasses grown in the United States for production purposes. If crops were grown internationally, used for biofuel production, and the fuel was shipped to the U.S., shipping the finished fuel to the U.S. could increase transport emissions. However, based on analysis of the increased transport emissions associated with sugarcane ethanol distribution to the U.S. considered for the 2010 final rule, this would at most add 1–2% to the overall lifecycle GHG impacts of the energy grasses.

3. Summary

Based on our comparison to switchgrass, EPA believes that cellulosic biofuel produced from the cellulose, hemicellulose and lignin portions of energy cane has similar or better lifecycle GHG impacts than biofuel produced from the cellulosic biomass from switchgrass. Our analysis suggests that energy cane has GHG impacts associated with growing and harvesting the feedstock that are similar to switchgrass. Emissions from growing and harvesting energy cane are approximately 4 kg CO_2eq/mmBtu higher than switchgrass. These are small changes in the overall lifecycle, representing at most a 6% change in the energy grass lifecycle impacts in comparison to the petroleum fuel baseline. Furthermore, energy cane is expected to have similar or lower GHG emissions than switchgrass associated with other components of the biofuel lifecycle.

Under a hypothetical worst case, if the calculated increases in growing and harvesting the new feedstocks are incorporated into the lifecycle GHG emissions calculated for switchgrass, and other lifecycle components are projected as having similar GHG impacts to switchgrass (including land use change associated with switchgrass production), the overall lifecycle GHG reductions for biofuel produced from energy cane still meet the 60% reduction threshold for cellulosic biofuel. We believe these are conservative estimates, as use of energy cane as a feedstock is expected to have smaller land-use GHG impacts than switchgrass, due to higher yields. The docket for this rule provides additional detail on the analysis of energy cane as a biofuel feedstock.

Although this analysis assumes energy cane biofuels produced for sale and use in the United States will most likely come from domestically produced feedstock, we also intend for the approved pathways to cover energy cane from other countries. We do not expect incidental amounts of biofuels from feedstocks produced in other nations to impact our assessment that the average GHG emissions reductions will meet the threshold for qualifying as a cellulosic biofuel pathway. Moreover, those countries most likely to be exporting energy cane or biofuels produced from energy cane are likely to be major producers which typically use similar cultivars and farming techniques. Therefore, GHG emissions from producing biofuels with energy cane grown in other countries should be similar to the GHG emissions we estimated for U.S. energy cane, though they could be slightly higher or lower. For example, the renewable biomass provisions under the Energy Independence and Security Act as outlined in the March 2010 RFS final rule regulations, would preclude use of a crop as a feedstock for renewable fuel if it was gown on land that was a direct conversion of previously unfarmed land in other countries into cropland for energy grass-based renewable fuel production. Furthermore, any energy grass production on existing cropland internationally would not be expected to have land use impacts beyond what was considered for switchgrass production. Even if there were unexpected larger differences, EPA believes the small amounts of feedstock or fuel potentially coming from other countries will not impact our threshold analysis.

Based on our assessment of switchgrass in the March 2010 RFS final rule and this comparison of GHG emissions from switchgrass and energy cane, we do not expect variations to be large enough to bring the overall GHG impact of fuel made from energy cane to come close to the 60% threshold for cellulosic biofuel. Therefore, EPA is including cellulosic biofuel produced from the cellulose, hemicelluloses and lignin portions of energy cane under the same pathways for which cellulosic biomass from switchgrass qualifies under the RFS final rule.

C. Lifecycle Greenhouse Gas Emissions Analysis for Certain Renewable Gasoline and Renewable Gasoline Blendstocks Pathways

In this rule, EPA is also adding pathways to Table 1 to § 80.1426 for the production of renewable gasoline and renewable gasoline blendstock using specified feedstocks, fuel production processes, and process energy sources. The feedstocks we considered are generally considered waste feedstocks such as crop residues or cellulosic components of separated yard waste. These feedstocks have been identified by the industry as the most likely feedstocks for use in making renewable gasoline or renewable gasoline blendstock in the near term due to their availability and low cost. Additionally, these feedstocks have already been analyzed by EPA as part of the RFS rulemaking for the production of other fuel types. Consequently, no new modeling is required and we rely on earlier assessments of feedstock production and distribution for assessing the likely lifecycle impact on renewable gasoline and renewable gasoline blendstock. We have also relied on the petroleum gasoline baseline assessment from the March 2010 RFS rule for estimating the fuel distribution and use GHG emissions impacts for renewable gasoline and renewable gasoline blendstock. Consequently, the only new analysis required is of the technologies for turning the feedstock into renewable gasoline and renewable gasoline blendstock.

[50] The F–T diesel process modeled applies to cellulosic diesel, jet fuel, heating oil, and naphtha.

1. Feedstock Production and Distribution

EPA has evaluated renewable gasoline and renewable gasoline blendstock pathways that utilize cellulosic feedstocks currently included in Table 1 to § 80.1426 of the regulations. The following feedstocks were evaluated:

- Cellulosic biomass from crop residue, slash, pre-commercial thinnings and tree residue, annual cover crops;
- Cellulosic components of separated yard waste;
- Cellulosic components of separated food waste; and
- Cellulosic components of separated MSW

The FASOM and FAPRI models were used to analyze the GHG impacts of the feedstock production portion of a fuel's lifecycle. In the March 2010 RFS rulemaking, FASOM and FAPRI modeling was performed to analyze the emissions impact of using corn stover as a biofuel feedstock and this modeling was extended to some additional feedstock sources considered similar to corn stover. This approach was used for crop residues, slash, pre-commercial thinnings, tree residue and cellulosic components of separated yard, food, and MSW. These feedstocks are all excess materials and thus, like corn stover, were determined to have little or no land use change GHG impacts. Their GHG emission impacts are mainly associated with collection, transport, and processing into biofuel. See the RFS rulemaking preamble for further discussion. We used the results of the corn stover modeling in this analysis to estimate the upper bound of agricultural sector impacts from the production of the various cellulosic feedstocks noted above.

The agriculture sector modeling results for corn stover represents all of the direct and significant indirect emissions in the agriculture sector (feedstock production emissions) for a certain quantity of corn stover produced. For the March 2010 RFS rulemaking, this was roughly 62 million dry tons of corn stover to produce 5.7 billion gallons of ethanol assuming biochemical fermentation to ethanol processing. We have calculated GHG emissions from feedstock production for that amount of corn stover. The GHG emissions were then divided by the total heating value of the fuel to get feedstock production emissions per mmBtu of fuel. In addition to the biochemical ethanol process, a similar analysis was completed for thermochemical ethanol and F–T diesel pathways as part of the RFS rulemaking.

In this rulemaking we are analyzing renewable gasoline and renewable gasoline blendstock produced from corn stover (and, by extension, other waste feedstocks). The number of gallons of fuel produced from a ton of corn stover (modeled process yields) is specific to the process used to produce renewable fuel. EPA has adjusted the results of the earlier corn stover modeling to reflect the different process yields and heating value of renewable gasoline or renewable gasoline blendstock product. The results of this calculation are shown below in Table 7.

We based our process yields and heating values for renewable gasoline and renewable gasoline blendstock on several process technologies representative of technologies anticipated to be used in producing these fuels. As discussed later in this section, there are four main types of fuel production technologies available for producing renewable gasoline. These four processes can be characterized as (1) thermochemical gasification, (2) catalytic pyrolysis and upgrading to renewable gasoline or renewable gasoline blendstock (''catalytic pyrolysis and upgrading''), (3) biochemical fermentation with upgrading to renewable gasoline or renewable gasoline blendstock via carboxylic acid (''fermentation and upgrading''), and (4) direct biochemical fermentation to renewable gasoline and renewable gasoline blendstock (''direct fermentation''). The thermochemical gasification process was modeled as part of the March 2010 RFS final rule, included as producing naptha via the F–T process. Our analysis of the catalytic pyrolysis process was based on the modeling work completed by the National Renewable Energy Laboratory (NREL) for this rule for a process to make renewable gasoline blendstock.[51] The fermentation and upgrading process was modeled based on confidential business information (CBI) from industry for a unique process which uses biochemical conversion of cellulose to renewable gasoline via a carboxylic acid route. In addition, we have qualitatively assessed the direct fermentation to renewable gasoline process based on similarities to the biochemical ethanol process already analyzed as part of the March 2010 RFS rulemaking. The fuel production section below provides further discussion on extending the GHG emissions results of the biochemical ethanol fermentation process to a biochemical renewable gasoline or renewable gasoline blendstock fermentation process. In some cases, the available data sources included process yields for renewable gasoline or renewable gasoline blendstock produced from wood chips rather than corn stover which was specifically modeled as a feedstock in the RFS final rule. We believe that the process yields are not significantly impacted by the source of cellulosic material whether the cellulosic material comes from residue such as corn stover or wood material such as from tree residues. We made the simplifying assumption that one dry ton of wood feedstock produces the same volume of renewable gasoline or renewable gasoline blendstock as one dry ton of corn stover. We believe this is reasonable considering that the RFS rulemaking analyses for biochemical ethanol and thermochemical F–T diesel processes showed limited variation in process yields between different feedstocks for a given process technology.[52] In addition, since the renewable gasoline and renewable gasoline blendstock pathways include feedstocks that were already considered as part of the RFS2 final rule, the existing feedstock lifecycle GHG impacts for distribution of corn stover were also applied to this analysis.[53]

Feedstock production emissions are shown in Table 7 below for corn stover. Corn stover feedstock production emissions are mainly a result of corn stover removal increasing the profitability of corn production (resulting in shifts in cropland and thus slight emission impacts) and also the need for additional fertilizer inputs to replace the nutrients lost when corn stover is removed. However, corn stover removal also has an emissions benefit as it encourages the use of no-till farming which results in the lowering of domestic land use change emissions. This change to no-till farming results in a negative value for domestic land use change emission impacts (see also Table 13 below). For other waste feedstocks (*e.g.,* tree residues and cellulosic components of separate yard, food, and MSW), the feedstock production emissions are even lower than the values shown for corn stover since the

[51] Kinchin, Christopher. Catalytic Fast Pyrolysis with Upgrading to Gasoline and Diesel Blendstocks. National Renewable Energy Laboratory (NREL). 2011.

[52] Aden, Andy. Feedstock Considerations and Impacts on Biorefining. National Renewable Energy Laboratory (NREL). December 2009. The report indicates that woody biomass feedstocks generally have higher yields than crop residues or herbaceous grasses (~6% higher yields). However the same lower yield was assumed for all as a conservatively low estimate.

[53] Results for feedstock distribution are aggregated along with fuel distribution and are reported in a later section, see conclusion section.

use of such feedstocks does not require land use changes or additional agricultural inputs. Therefore, we conclude that if the use of corn stover as a feedstock in the production of renewable gasoline and renewable gasoline blendstock yields lifecycle GHG emissions results for the resulting fuel that qualify it as cellulosic biofuel (*i.e.,* it has at least a 60% lifecycle GHG reduction as compared to conventional fuel), then the use of other waste feedstocks with little or no land use change emissions will also result in renewable gasoline or renewable gasoline blendstock that qualifies as cellulosic biofuel.

One commenter stated that the Agency assumed that using the corn stover for biofuels production would result in additional no-till farming without any evidence that the stover would actually be removed from no-tilled acres. This commenter feels that with recent increased profitability from corn production, farmers may actually increase tillage to reap high corn prices. This commenter urged the EPA to consider changes to soil carbon from the removal of corn stover as they may have an impact on the GHG score of this new biofuel pathway. This commenter further urged the Agency to not simply assume that additional no-till practices will be adopted with residue extraction.

The analysis the EPA conducted to evaluate the GHG impacts associated with corn stover removal as part of the March 2010 RFS final rule did not assume that the corn stover had to be removed from no-till corn production. The models used to evaluate the impacts of stover removal included the option for farmers to switch to no-till practices and therefore have the option for more stover removal. As the demand for stover increased in the case where stover is used for biofuel production, the relative costs associated with no-till factored in the impact of lost corn yield as well as higher yield for corn stover. The model optimized the rate of returns for the farmers such that no-till practices were applied until the increased returns for greater stover removal on no-till acres were balanced by lost profits from lower corn yields. Therefore, the comment that we assumed stover had to come from no-till acres or that the economics would drive more intensive tillage practices is not accurate, as described in more detail in the March 2010 RFS final rule.

Furthermore, there is an annual soil carbon penalty applied to crops with residue removal in our models. Thus, as one shifts from conventional corn to residue corn, an annual soil carbon penalty factor is applied. If residue removal is combined with switching to conservation tillage or no-till, then the net soil C effect would be the sum of the till change effect and the ''crop change'' effect.

For the March 2010 RFS rulemaking, EPA conducted an in-depth literature review of corn stover removal practices and consulted with numerous experts in the field. In the FRM, EPA recognized that sustainable stover removal practices vary significantly based on local differences in soil and erosion conditions, soil type, landscape (slope), tillage practices, crop rotation managements, and the use of cover crops. EPA, in consultation with USDA, based its impacts on corn stover from reduced till and no till acres based on agronomical practices, nutrient requirements, and erosion considerations. EPA does not believe that the commentor has provided new information that would substantially change our analysis of the GHG emissions associated with corn stover. However, EPA will continue to monitor actual practices and based on new data will consider reviewing and revising the methodology and assumptions associated with calculating the GHG emissions from all renewable fuel feedstocks.

TABLE 7—FEEDSTOCK PRODUCTION EMISSIONS FOR RENEWABLE GASOLINE AND RENEWABLE GASOLINE BLENDSTOCK PATHWAYS USING CORN STOVER

Feedstock production emission sources	Catalytic pyrolysis and upgrading to renewable gasoline and renewable gasoline blendstock (g CO_2-eq./mmBtu)	Biochemical fermentation and upgrading to renewable gasoline and renewable gasoline blendstock via carboxylic acid (g CO_2-eq./mmBtu)	Direct biochemical fermentation process to renewable gasoline and renewable gasoline blendstock (g CO_2-eq./mmBtu)
Domestic Livestock	7,648	6,770	~ 9,086
Domestic Farm Inputs and Fertilizer N_2O	1,397	1,237	~ 1,660
Domestic Rice Methane	366	324	~ 434
Domestic Land Use Change	−9,124	−8,076	~ −10,820
International Livestock	0	0	0
International Farm Inputs and Fertilizer N_2O	0	0	0
International Rice Methane	0	0	0
International Land Use Change	0	0	0
Total Feedstock Production Emissions:	287	254	~ 361
Assumed yield (gal/ton of biomass)	64.5	75	92.3

The results in Table 7 differ for the different pathways considered because of the different amounts of corn stover used to produce the same amount of fuel in each case. Table 7 only considers the feedstock production impacts associated with the renewable gasoline or renewable gasoline blendstocks pathways, other aspects of the lifecycle are discussed in the following sections.

2. Fuel Distribution

A petroleum gasoline baseline was developed as part of the RFS final rule which included estimates for fuel distribution emissions. Since renewable gasoline and renewable gasoline blendstocks when blended into gasoline are similar to petroleum gasoline, it is reasonable to assume similar fuel distribution emissions. Therefore, the existing fuel distribution lifecycle GHG impacts of the petroleum gasoline baseline from the RFS final rule were applied to this analysis.

3. Use of the Fuel

A petroleum gasoline baseline was developed as part of the RFS final rule which estimated the tailpipe emissions from fuel combustion. Since renewable gasoline and renewable gasoline blendstock are similar to petroleum gasoline in energy and hydrocarbon

content, the non-CO_2 combustion emissions calculated as part of the RFS final rule for petroleum gasoline were applied to our analysis of the renewable gasoline and renewable gasoline blendstock pathways. Only non-CO_2 emissions were included since carbon fluxes from land use change are accounted for as part of the biomass feedstock production.

4. Fuel Production

In the March 2010 RFS rulemaking, EPA analyzed several of the main cellulosic biofuel pathways: a biochemical fermentation process to ethanol and two thermochemical gasification processes, one producing mixed alcohols (primarily ethanol) and the other one producing mixed hydrocarbons (primarily diesel fuel). These pathways all exceeded the 60% lifecycle GHG threshold requirements for cellulosic biofuel using the specified feedstocks. Refer to the preamble and regulatory impact analysis (RIA) from the final rule for more details. From these analyses, it was determined that ethanol and diesel fuel produced from the specified cellulosic feedstocks and processes would be eligible for cellulosic and advanced biofuel RINs.

The thermochemical gasification process to diesel fuel (via F–T synthesis) also produces a smaller portion of renewable gasoline blendstock. In the final rule, naphtha produced with specified cellulosic feedstocks by a F–T process was included as exceeding the 60% lifecycle GHG threshold, with an applicable D–Code of 3, in Table 1 to § 80.1426. In this rule, we are changing the reference to F–T as the process technology to the more correct reference as gasification technology since F–T reactions are only part of the process technology.

Since the final March 2010 RFS rule was released, EPA has received several petitions and inquiries that suggest that renewable gasoline or renewable gasoline blendstock produced using processes other than the F–T process could also qualify for a similar D–Code of 3.[54] For the reasons described below, we have decided to authorize the generation of RINs with a D code of 3 for renewable gasoline and renewable gasoline blendstock produced using specified cellulosic feedstocks for the processes considered here.

Several routes have been identified as available for the production of renewable gasoline and renewable gasoline blendstock from renewable biomass. These include catalytic pyrolysis and upgrading to renewable gasoline or renewable gasoline blendstock (''catalytic pyrolysis and upgrading''), biochemical fermentation with upgrading to renewable gasoline or renewable gasoline blendstock via carboxylic acid (''fermentation and upgrading''), and direct biochemical fermentation to renewable gasoline and renewable gasoline blendstock (''direct fermentation'') and other thermo-catalytic hydrodeoxygenation routes with upgrading such as aqueous phase processing.[55] [56]

Similar to how we analyzed several of the main routes for cellulosic ethanol and cellulosic diesel for the final March 2010 RFS rule, we have chosen to analyze the main renewable gasoline and renewable gasoline blendstock pathways in order to estimate the potential GHG reduction profile for renewable gasoline and renewable gasoline blendstock across a range of other production technologies for which we are confident will have at least as great of GHG emission reductions as those specifically analyzed.

a. Catalytic Pyrolysis With Upgrading to Renewable Gasoline and Renewable Gasoline Blendstock

The first production process we investigated for this rule is a catalytic fast pyrolysis route to bio-oils with upgrading to a renewable gasoline or a renewable gasoline blendstock. We utilized process modeling results from the National Renewable Energy Laboratory (NREL). Information provided by industry and claimed as CBI are based on similar processing methods and suggest similar results than those reported by NREL. Details on the NREL modeling are described further in a technical report available through the docket.[57] Catalytic pyrolysis involves the rapid heating of biomass to about 500°C at slightly above atmospheric pressure. The rapid heating thermally decomposes biomass, converting it into pyrolysis vapor, which is condensed into a liquid bio-oil. The liquid bio-oil can then be upgraded using conventional hydroprocessing technology and further separated into renewable gasoline, renewable gasoline blendstock and renewable diesel streams (cellulosic diesel from catalytic pyrolysis is already included as an acceptable pathway in the RFS program). Some industry sources also expect to produce smaller fractions of heating oil in addition to gasoline and diesel blendstocks. Excess electricity from the process is also accounted for in our modeling as a co-product credit in which any excess displaces U.S. average grid electricity. Excess electricity is generated from the use of co-product coke/char and product gases and is available because internal electricity demands are fully met. The estimated energy inputs and electricity credits shown in Table 8, below, utilize the data provided by the NREL process modeling. However, industry sources also identified potential areas for improvements in energy use, such as the use of biogas fired dryers instead of natural gas fired dryers for drying incoming wet feedstocks and increased turbine efficiencies for electricity production which may result in lower energy consumption than estimated by NREL and thus improve GHG performance compared to our estimates here.

TABLE 8—2022 ENERGY USE AT CELLULOSIC BIOFUEL FACILITIES

[Btu/gal]

Technology	Biomass use	Natural gas use	Purchased electricity	Sold electricity
Catalytic Pyrolysis to Renewable Gasoline or Renewable Gasoline Blendstock	136,000	51,000	0	−2,000

[54] See *http://www.epa.gov/otaq/fuels/renewablefuels/compliancehelp/rfs2-lca-pathways.htm* for list of petitions received by EPA.

[55] Regalbuto, John. ''An NSF perspective on next generation hydrocarbon biorefineries,'' Computers and Chemical Engineering 34 (2010) 1393–1396. February 2010.

[56] Serrano-Ruiz, J., Dumesic, James. ''Catalytic routes for the conversion of biomass into liquid hydrocarbon transportation fuels,'' Energy Environmental Science (2011) 4, 83–99.

[57] Kinchin, Christopher. Catalytic Fast Pyrolysis with Upgrading to Gasoline and Diesel Blendstocks. National Renewable Energy Laboratory (NREL). 2011.

The emissions from energy inputs were calculated by multiplying the amount of energy by emission factors for fuel production and combustion, based on the same method and factors used in the March 2010 RFS final rulemaking. The emission factors for the different fuel types are from GREET and were based on assumed carbon contents of the different process fuels. The emissions from producing electricity in the U.S. were also taken from GREET and represent average U.S. grid electricity production emissions.

The major factors influencing the emissions from the fuel production stage of the catalytic pyrolysis pathway are the use of natural gas (mainly due to hydrogen production for hydroprocessing) and the co-products available for additional heat and power generation.[58] See Table 9 for a summary of emissions from fuel production.

TABLE 9—FUEL PRODUCTION EMISSIONS FOR CATALYTIC PYROLYSIS AND UPGRADING TO RENEWABLE GASOLINE OR RENEWABLE GASOLINE BLENDSTOCK USING CORN STOVER

Lifecycle stage	Catalytic pyrolysis to renewable gasoline or renewable gasoline blendstock (g CO_2-eq./mmBtu)
On-Site & Upstream Emissions (Natural Gas & Biomass*)	31,000
Electricity Co-Product Credit	−3,000
Total Fuel Production Emissions:	28,000

* Only non-CO_2 combustion emissions from biomass

b. Catalytic Upgrading of Biochemically Derived Intermediates to Renewable Gasoline and Renewable Gasoline Blendstock

The second production process we investigated is a biochemical fermentation process to intermediate, such as carboxylic acids with catalytic upgrading to renewable gasoline or renewable gasoline blendstock. This process involves the fermentation of biomass using microorganisms that produce a variety of carboxylic acids. If the feedstock has high lignin content, then the biomass is pretreated to enhance digestibility. The acids are then neutralized to carboxylate salts and further converted to ketones and alcohols for refining into gasoline, diesel, and jet fuel.

The process requires the use of natural gas and hydrogen inputs.[59] No purchased electricity is required as lignin is projected to be used to meet all facility demands as well as provide excess electricity to the grid. EPA used the estimated energy and material inputs along with emission factors to estimate the GHG emissions from this process. The energy inputs and electricity credits are shown in Table 10, below. These inputs are based on Confidential Business Information (CBI), rounded to the nearest 1000 units, provided by industry as part of the petition process for new fuel pathways.

TABLE 10—2022 ENERGY USE AT CELLULOSIC FACILITY

[Btu/gal]

Technology	Biomass use	Natural gas use	Purchased electricity	Sold electricity
Biochemical Fermentation to Renewable Gasoline or Renewable Gasoline Blendstock via Carboxylic Acid	49,000	59,000	0	−2,000

The process also uses a small amount of buffer material as neutralizer which was not included in the GHG lifecycle results due to its likely negligible emissions impact. The GHG emissions estimates from the fuel production stage are seen in Table 11.

TABLE 11—FUEL PRODUCTION EMISSIONS FOR BIOCHEMICAL FERMENTATION TO RENEWABLE GASOLINE OR RENEWABLE GASOLINE BLENDSTOCK VIA CARBOXYLIC ACID USING CORN STOVER

Lifecycle stage	GHG Emissions (g CO_2-eq./mmBtu)
On-Site & Upstream Emissions (Natural Gas & Biomass*)	33,000
Electricity Co-Product Credit	−3,000
Total Fuel Production Emissions:	30,000

* Only non-CO_2 combustion emissions from biomass

[58] A steam methane reformer (SMR) is used to produce the hydrogen necessary for hydroprocessing. In the U.S. over 95% of hydrogen is currently produced via steam reforming (DOE, 2002 ''A National Vision of America's Transition to a Hydrogen Economy to 2030 and Beyond''). Other alternatives are available, such as renewable or nuclear resources used to extract hydrogen from water or the use of biomass to produces hydrogen. These alternative methods, however, are currently not as efficient or cost effective as the use of fossil fuels and therefore we conservatively estimate emissions from hydrogen production using the more commonly used SMR technology.

[59] Hydrogen emissions are modeled as natural gas and electricity demands.

c. Biological Conversion to Renewable Gasoline and Renewable Gasoline Blendstock

The third production process we investigated involves the use of microorganisms to biologically convert sugars hydrolyzed from cellulose directly into hydrocarbons which could be either a complete fuel as renewable gasoline or a renewable gasoline blendstock. The process is similar to the biochemical fermentation to ethanol pathway modeled for the final rule with the major difference being the end fuel product, hydrocarbons instead of ethanol. Researchers believe that this new technology could achieve improvements over classical fermentation approaches because hydrocarbons generally separate spontaneously from the aqueous phase, thereby avoiding poisoning of microbes by the accumulated products and facilitating separation/collection of hydrocarbons from the reaction medium. In other words, some energy savings may result because fewer separation unit operations could be required for separating the final product from other reactants and there may be better conversion yields as the fermentation microorganisms are not poisoned when interacting with accumulated products. We also expect that the lignin/byproduct portions of the biomass from the fermentation to hydrocarbon process could be converted into heat and electricity for internal demands or for export, similar to the biochemical fermentation to ethanol pathway.

Therefore, we can conservatively extend our final March 2010 RFS rule biochemical fermentation to ethanol process results to a similar (but likely slightly improved) process that instead produces hydrocarbons. Since the final rule cellulosic ethanol GHG results were well above the 60% GHG reduction threshold for cellulosic biofuels, if actual emissions from other necessary changes to the direct biochemical fermentation to hydrocarbons process represent some small increment in GHG emissions, the pathway would still likely meet the threshold. Table 12 is our qualitative assessment of the potential emissions reductions from a process using biochemical fermentation to cellulosic hydrocarbons assuming similarities to the biochemical fermentation to cellulosic ethanol route from the final rule.

TABLE 12—FUEL PRODUCTION EMISSIONS FOR MARCH 2010 RFS CELLULOSIC BIOCHEMICAL ETHANOL COMPARED TO DIRECT BIOCHEMICAL FERMENTATION TO RENEWABLE GASOLINE OR RENEWABLE GASOLINE BLENDSTOCK USING CORN STOVER

Lifecycle stage	Cellulosic biochemical ethanol emissions (g CO_2-eq./mmBtu)	Direct biochemical fermentation to renewable gasoline and renewable gasoline blendstock emissions (g CO_2-eq./mmBtu)
On-Site Emissions & Upstream (biomass)	3,000	< or = 3,000
Electricity Co-Product Credit	−35,000	= −35,000
Total Fuel Production Emissions [60]:	−33,000	< or = −33,000

Table 13 below breaks down by stage the lifecycle GHG emissionsfor the renewable gasoline and renewable gasoline blendstock pathways using corn stover and the 2005 petroleum baseline. The table demonstrates the contribution of each stage in the fuel pathway and its relative significance in terms of GHG emissions. These results are also presented in graphical form in a supplemental memorandum to the docket.[61] As noted above, these analyses assume natural gas as the process energy when needed; using biogas as process energy would result in an even better lifecycle GHG impact.

TABLE 13—LIFECYCLE GHG EMISSIONS FOR RENEWABLE GASOLINE AND RENEWABLE GASOLINE BLENDSTOCK PATHWAYS USING CORN STOVER, 2022

[kg CO_2-eq./mmBtu]

Fuel type	Catalytic pyrolysis and upgrade to renewable gasoline and renewable gasoline blendstock	Biochemical fermentation to renewable gasoline and renewable gasoline blendstock via carboxylic acid	Direct biochemical fermentation to renewable gasoline and renewable gasoline blendstock	2005 gasoline baseline
Net Domestic Agriculture (w/o land use change)	9	8	~ 11	.....
Net International Agriculture (w/o land use change)	.....	.....	.....	.....
Domestic Land Use Change	−9	−8	~ −11	.....
International Land Use Change	.....	.....	.....	.....
Fuel Production	28	30	< or = −33	19
Fuel and Feedstock Transport	2	2	~ 2	*
Tailpipe Emissions	2	2	~ 1	79
Total Emissions	32	34	< or = −29	98

[60] Numbers do not add up due to rounding.

[61] Memorandum to the Air and Radiation Docket EPA–HQ–OAR–2011–0542 ''Supplemental Information for Renewable Gasoline and Renewable Gasoline Blendstock Pathways Under the Renewable Fuel Standard (RFS2) Program''.

TABLE 13—LIFECYCLE GHG EMISSIONS FOR RENEWABLE GASOLINE AND RENEWABLE GASOLINE BLENDSTOCK PATHWAYS USING CORN STOVER, 2022—Continued

[kg CO_2-eq./mmBtu]

Fuel type	Catalytic pyrolysis and upgrade to renewable gasoline and renewable gasoline blendstock	Biochemical fermentation to renewable gasoline and renewable gasoline blendstock via carboxylic acid	Direct biochemical fermentation to renewable gasoline and renewable gasoline blendstock	2005 gasoline baseline
% Change from Baseline	−67%	−65%	−129%	

* Emissions included in fuel production stage.

d. Extension of Modeling Results to Other Production Processes Producing Renewable Gasoline or Renewable Gasoline Blendstock

In the March 2010 RFS rulemaking, we modeled the GHG emissions results from the biochemical fermentation process to ethanol, thermochemical gasification processes to mixed alcohols (primarily ethanol) and mixed hydrocarbons (primarily diesel fuel). We extended these modeled process results to apply when the biofuel was produced from ''any'' process. We determined that since we modeled multiple cellulosic biofuel processes and all were shown to exceed the 60% lifecycle GHG threshold requirements for cellulosic biofuel using the specified feedstocks its was reasonable to extend to other processes (*e.g.* additional thermo-catalytic hydrodeoxygenation routes with upgrading similar to pyrolysis and aqueous phase processing) that might develop as these would likely represent improvements over existing processes as the industry works to improve the economics of cellulosic biofuel production by, for example, reducing energy consumption and improving process yields. Similarly, this rule assesses multiple processes for the production of renewable gasoline and renewable gasoline blendstocks and all were shown to exceed the 60% lifecycle GHG threshold requirements for cellulosic biofuel using specified feedstocks.

As was the case in our earlier rulemaking, a couple reasons in particular support extending our modeling results to other production process producing renewable gasoline or renewable gasoline blendstock from cellulosic feedstock. Under this rule we analyzed the core technologies most likely available through 2022 for production of renewable gasoline and renewable gasoline blendstock routes from cellulosic feedstock as shown in literature. [62] [63] The two primary routes for renewable gasoline and renewable gasoline blendstock production from cellulosic feedstock can be classified as either thermochemical or biological. Each of these two major categories has two subcategories. The processes under the thermochemical category include:

- Pyrolysis and Upgrading—in which cellulosic biomass is decomposed with temperature to bio-oils and requires further catalytic processing to produce a finished fuel
- Gasification—in which cellulosic biomass is decomposed to syngas with further catalytic processing of methanol to gasoline or through Fischer-Tropsch (F–T) synthesis to gasoline

The processes under the biochemical category include:

- Biological conversion to hydrocarbons—requires the release of sugars from biomass and microorganisms to biologically convert sugars straight into hydrocarbons instead of alcohols
- Catalytic upgrading of biochemically produced intermediates—requires the release of sugars from biomass and aqueous- or liquid-phase processing of sugars or biochemically produced intermediate products into hydrocarbons using solid catalysts,

As part of the modeling effort here, as well as for the March 2010 RFS final rule, we have considered the lifecycle GHG impacts of the four possible production technologies mentioned above. The pyrolysis and upgrading, direct biological conversion, and catalytic upgrading of biochemically produced intermediates are considered in this rule and the gasification route was already included in the March 2010 final rule. In all cases, the processes that we have considered meet the 60% lifecycle GHG reduction required for cellulosic biofuels. Furthermore, we believe that the results from our modeling would cover all the likely variations within these potential routes for producing renewable gasoline and renewable gasoline blendstock which also use natural gas, biogas or biomass [64] for process energy and that all such production variations would also meet the 60% lifecycle threshold.[65]

The main reason for this is that we believe that our energy input assumptions are reasonable at this time but probably in some cases are conservatively high for commercial scale cellulosic facilities. The cellulosic industry is in its early stages of development and many of the estimates of process technology GHG impacts is based on pre-commercial scale assessments and demonstration programs. Commercial scale cellulosic facilities will continue to make efficiency improvements over time to maximize their fuel products/co-products and minimize wastes. For cellulosic facilities, such improvements include increasing conversion yields and fully utilizing the biomass input for valuable products.

An example of increasing the amount of biomass utilized is the combustion of undigested or unconverted biomass for heat and power. The three routes that we analyzed for the production of renewable gasoline and renewable gasoline blendstock in today's rule assume an electricity production credit from the economically-driven use of lignin or waste byproducts; we also ran

[62] Regalbuto, John. ''An NSF perspective on next generation hydrocarbon biorefineries,'' Computers and Chemical Engineering 34 (2010) 1393–1396. February 2010.

[63] Serrano-Ruiz, J., Dumesic, James. ''Catalytic routes for the conversion of biomass into liquid hydrocarbon transportation fuels,'' Energy Environmental Science (2011) 4, 83–99.

[64] Our lifecycle analysis assumes that producers would use the same type of biomass as both the feedstock and the process energy.

[65] One commenter wanted clarification of the term ''process energy'' as it applies to the production of renewable gasoline. The EPA did not intend for the term, ''process energy'', to include other energy sources, such as electricity to provide power for ancillary processes, such as lights, small pumps, computers, and other small support equipment.

a sensitivity case where no electricity credit was given. We found that all of the routes analyzed would still pass the GHG threshold without an electricity credit, providing confidence that over the range of technology options, these process technologies will surely allow the cellulosic biofuel produced to exceed the threshold for cellulosic biofuel GHG performance. Without excess electricity production the catalytic pyrolysis pathway results in a 65% lifecycle GHG reduction, the biochemical fermentation via carboxylic acid pathway results in a 62% lifecycle GHG reduction, and the direct biochemical fermentation pathway results in a 93% reduction in lifecycle GHG emissions compared to the petroleum fuel baseline.

Additionally, while the final results reported in this rule include an electricity credit, this electricity credit is based on current technology for generating electricity; it is possible that over the next decade as cellulosic biofuel production matures, the efficiency with which electricity is generated at these facilities will also improve. Such efficiency improvements will tend to improve the GHG performance for cellulosic biofuel technologies in general including those used to produce renewable gasoline.

Furthermore, industry has identified other areas for energy improvements which our current pathway analyses do not include. Therefore, the results we have come up with for the individual pathway types represent conservative estimates and any variations in the pathways considered are likely to result in greater GHG reductions than what is considered here. For example, the variation of the catalytic pyrolysis route considered here resulted in a 67% reduction in lifecycle GHG emissions compared to the petroleum baseline. However, as was mentioned this was based on data from our NREL modeling and industry CBI data indicated more efficient energy performance which, if realized, would improve GHG performance. Another area for improvement in this pathway could be the use of anaerobic digestion to treat organics in waste water. If the anaerobic digestion is on-site, then enough biogas could potentially be produced to replace all of the fossil natural gas used as fuel and about half the natural gas fed for hydrogen production.[66] Thus, fossil natural gas consumption could be further minimized under certain scenarios. We believe that as commercial scale cellulosic facilities develop, more of these improvements will be made to maximize the use of all the biomass and waste byproducts available to bring the facility closer to energy self-sufficiency. These improvements could help to increase the economic profitability for cellulosic facilities where fossil energy inputs become costly to purchase. Therefore we can extend the modeling results for our pyrolysis route to all variations of this production technology which use natural gas, biogas or biomass for production energy for producing renewable gasoline or renewable gasoline blendstock.

The F–T gasification technology route considered as part of the March 2010 RFS final rule resulted in an approximately 91% reduction in lifecycle GHG emissions compared to the petroleum baseline. This could be considered a conservatively high estimate as the process did not assume any excess electricity production, which as mentioned above could lead to additional GHG reductions. The F–T process involves gasifying biomass into syngas (mix of H_2 and CO) and then converting the syngas through a catalytic process into a hydrocarbon mix that is further refined into finished product. The F–T process considered was based on producing both gasoline and diesel fuel so that it was not optimized for renewable gasoline production. A process for producing primarily renewable gasoline rather than diesel from a gasification route should not result in a significantly worse GHG impacts compared to the mixed fuel process analyzed. Furthermore, as the lifecycle GHG reduction from the F–T process considered was around 91%, there is considerable room for variations in this route to still meet the 60% lifecycle GHG reduction threshold for cellulosic fuels. Therefore, in addition to the F–T process originally analyzed for producing naphtha, we can extend the results based on the above analyses to include all variations of the gasification route which use natural gas, biogas or biomass for production energy for producing renewable gasoline or renewable gasoline blendstock. These variations include for example different catalysts and different refining processes to produce different mixes of final fuel product. While the current Table 1 entry in the regulations does not specify process energy sources, we are adding these specific eligible energy sources since we have not analyzed other energy sources (*e.g.,* coal) as also allowing the pathway to meet the GHG performance threshold.

There is an even wider gap between the results modeled for the direct fermentation route and the cellulosic lifecycle GHG threshold. The variation we considered for the direct fermentation process resulted in an approximately 129% reduction in lifecycle GHG emissions compared to the petroleum baseline. This process did consider production of electricity as part of the process but as mentioned even if this was not the case the pathway would still easily fall below the 60% lifecycle threshold for cellulosic biofuels. If actual emissions from other necessary changes to the direct biochemical fermentation to hydrocarbons process represent some small increment in GHG emissions, the pathway would still likely meet the threshold. Therefore, we can extend the results to all variations of the direct biochemical route for renewable gasoline or renewable gasoline blendstock production which use natural gas, biogas or biomass for production energy.

The biochemical with catalytic upgrading route that we evaluated resulted in a 65% reduction in GHG emissions compared to the petroleum baseline. However, this can be considered a conservatively high estimate. For instance, the biochemical fermentation to gasoline via carboxylic acid route considered did not include the potential for generating steam from the combustion of undigested biomass and then using this steam for process energy. If this had been included, natural gas consumption could potentially be decreased which would lower the potential GHG emissions estimated from the process. Therefore, the scenario analyzed could be considered conservative in estimating actual natural gas usage. As was the case with the pyrolysis route considered, we believe that as commercial scale cellulosic facilities develop, improvements will be made to maximize the use of all the biomass and waste byproducts available to bring the facility closer to energy self-sufficiency. These improvements help to increase the economic profitability for cellulosic facilities where fossil energy inputs become costly to purchase. The processes we analyzed for this rulemaking utilized a mix of natural gas and biomass for process energy, with biogas replacing natural gas providing improved GHG performance. We have not analyzed other fuel types (*e.g.,* coal) and are therefore not approving processes that utilized other fuel sources at this point. Therefore, we are

[66] Kinchin, Christopher. Catalytic Fast Pyrolysis with Upgrading to Gasoline and Diesel Blendstocks. National Renewable Energy Laboratory (NREL). 2011.

extending our results to include all variations of the biochemical with catalytic upgrading process utilizing natural gas, biogas or biomass for process energy.

While actual cellulosic facilities may show some modifications to the process scenarios we have already analyzed, our results give a good indication of the range of emissions we could expect from processes producing renewable gasoline and renewable gasoline blendstock from cellulosic feedstock, all of which meet the 60% cellulosic biofuel threshold (assuming they are utilizing natural gas, biogas or biomass for process energy). Technology changes in the future are likely to increase efficiency to maximize profits, while also lowering lifecycle GHG emissions. Therefore, we have concluded that since all of the renewable gasoline or renewable gasoline blendstock fuel processing methods we have analyzed exceed the 60% threshold using specific cellulosic feedstock types, we can conclude that processes producing renewable gasoline or renewable gasoline blendstock that fit within the categories of process analyzed here and are produced from the same feedstock types and using natural gas, biogas or biomass for process energy use will also meet the 60% GHG reduction threshold. In addition, while other technologies may develop, we expect that they will only become commercially competitive if they have better yields (more gallons per ton of feedstock) or lower production costs due to lower energy consumption. Both of these factors would suggest better GHG performance. This would certainly be the case if such processes also relied upon using biogas and/or biomass as the primary energy source. Therefore based on our review of the existing primary cellulosic biofuel production processes, likely GHG emission improvements for existing or new technologies, and consideration of the positive GHG emissions benefits associated with using biogas and/or biomass for process energy, we are approving for cellulosic RIN generation any process for renewable gasoline and renewable gasoline blendstock production using specified cellulosic biomass feedstocks as long as the process utilizes biogas and/or biomass for all process energy.

5. Summary

Three renewable gasoline and renewable gasoline blendstock pathways were compared to baseline petroleum gasoline, using the same value for baseline gasoline as in the March 2010 RFS final rule analysis. The results of the analysis indicate that the renewable gasoline and renewable gasoline blendstock pathways result in a GHG emissions reduction of 65–129% or better compared to the gasoline fuel it would replace using corn stover as a feedstock. The renewable gasoline and renewable gasoline blendstock pathways which use corn stover as a feedstock all exceed the 60% lifecycle GHG threshold requirements for cellulosic biofuel, these pathways capture the likely current technologies, and future technology improvements are likely to increase efficiency and lower GHG emissions. Therefore we have determined that all processes producing renewable gasoline or renewable gasoline blendstock from corn stover can qualify if they fall in the following process characterizations:

- Catalytic pyrolysis and upgrading utilizing natural gas, biogas, and/or biomass as the only process energy sources
- Gasification and upgrading utilizing natural gas, biogas, and/or biomass as the only process energy sources
- Thermo-catalytic hydrodeoxygenation processes such as aqueous phase processing with upgrading sufficiently similar to pyrolysis and gasification
- Direct fermentation utilizing natural gas, biogas, and/or biomass as the only process energy sources
- Fermentation and upgrading utilizing natural gas, biogas, and/or biomass as the only process energy sources
- Any process utilizing biogas and/or biomass as the only process energy sources.

As was the case for extending corn stover results to other feedstocks in the March 2010 RFS final rule, these results are also reasonably extended to feedstocks with similar or lower GHG emissions profiles, including the following feedstocks:

- Cellulosic biomass from crop residue, slash, pre-commercial thinnings and tree residue, annual cover crops;
- Cellulosic components of separated yard waste;
- Cellulosic components of separated food waste; and
- Cellulosic components of separated MSW

For more information on the reasoning for extension to these other feedstocks refer to the feedstock production and distribution section or the March 2010 RFS rulemaking (75 FR 14670).

Based on these results, today's rule includes pathways for the generation of cellulosic biofuel RINs for renewable gasoline or renewable gasoline blendstock produced by catalytic pyrolysis and upgrading, gasification and upgrading, other similar thermo-catalytic hydrodeoxygenation routes with upgrading, direct fermentation, fermentation and upgrading, all utilizing natural gas, biogas, and/or biomass as the only process energy sources or any process utilizing biogas and/or biomass as the only energy sources, and using corn stover as a feedstock or the feedstocks noted above. In order to qualify for RIN generation, the fuel must meet the other definitional criteria for renewable fuel (*e.g.,* produced from renewable biomass, and used to reduce or replace petroleum-based transportation fuel, heating oil or jet fuel) specified in the Clean Air Act and the RFS regulations.

A manufacturer of a renewable motor vehicle gasoline (including parties using a renewable blendstock obtained from another party), must satisfy EPA motor vehicle registration requirements in 40 CFR part 79 for the fuel to be used as a transportation fuel. Per 40 CFR 79.56(e)(3)(i), a renewable motor vehicle gasoline would be in the Non-Baseline Gasoline category or the Atypical Gasoline category (depending on its properties) since it is not derived only from conventional petroleum, heavy oil deposits, coal, tar sands and/or oil sands (40 CFR 79.56(e)(3)(i)(5)). In either case, the Tier 1 requirements at 40 CFR 79.52 (emissions characterization) and the Tier 2 requirements at 40 CFR 79.53 (animal exposure) are conditions for registration unless the manufacturer qualifies for a small business provision at 40 CFR 79.58(d). For a non-baseline gasoline, a manufacturer under $50 million in annual revenue is exempt from Tier 1 and Tier 2. For an atypical gasoline there is no exemption from Tier 1, but a manufacturer under $10 million in annual revenue is exempt from Tier 2.

Registration for a motor vehicle gasoline at 40 CFR 79 is via EPA Form 3520–12, Fuel Manufacturer Notification for Motor Vehicle Fuel, available at: *http://www.epa.gov/otaq/regs/fuels/ffarsfrms.htm.*

D. Esterification Production Process Inclusion for Specified Feedstocks Producing Biodiesel

The Agency is not taking final action at this time on its proposed inclusion of the process ''esterification'' as an approved biodiesel production process in Table 1 to § 40 CFR 80.1426. See 77 FR 465. We continue to evaluate the issue and anticipate issuing a final determination as part of a subsequent rulemaking.

III. Additional Changes to Listing of Available Pathways in Table 1 of 80.1426

We are also finalizing two changes to Table 1 to 80.1426 that were proposed on July 1, 2011(76 FR 38844). The first change adds ID letters to pathways to facilitate references to specific pathways. The second change adds ''rapeseed'' to the existing pathway for renewable fuel made from canola oil.

On September 28, 2010, EPA published a ''Supplemental Determination for Renewable Fuels Produced Under the Final RFS2 Program from Canola Oil'' (75 FR 59622). In the July 1, 2011 NPRM (76 FR 38844) we proposed to clarify two aspects of the supplemental determination. First we proposed to amend the regulatory language in Table 1 to § 80.1426 to clarify that the currently-approved pathway for canola also applies more generally to rapeseed. While ''canola'' was specifically described as the feedstock evaluated in the supplemental determination, we had not intended the supplemental determination to cover just those varieties or sources of rapeseed that are identified as canola, but to all rapeseed. As described in the July 1, 2011 NPRM, we currently interpret the reference to ''canola'' in Table 1 to § 80.1426 to include any rapeseed. To eliminate ambiguity caused by the current language, however, we proposed to replace the term ''canola'' in that table with the term ''canola/rapeseed''. Canola is a type of rapeseed. While the term ''canola'' is often used in the American continent and in Australia, the term ''rapeseed'' is often used in Europe and other countries to describe the same crop. We received no adverse comments on our proposal, and are finalizing it as proposed. This change will enhance the clarity of the regulations regarding the feedstocks that qualify under the approved canola biodiesel pathway.

Second, we wish to clarify that although the GHG emissions of producing fuels from canola feedstock grown in the U.S. and Canada was specifically modeled as the most likely source of canola (or rapeseed) oil used for biodiesel produced for sale and use in the U.S., we also intended that the approved pathway cover canola/rapeseed oil from other countries, and we interpret our regulations in that manner. We expect the vast majority of biodiesel used in the U.S. and produced from canola/rapeseed oil will come from U.S. and Canadian crops. Incidental amounts from crops produced in other nations will not impact our average GHG emissions for two reasons. First, our analyses considered world-wide impacts and thus considered canola/rapeseed crop production in other countries. Second, other countries most likely to be exporting canola/rapeseed or biodiesel product from canola/rapeseed are likely to be major producers which typically use similar cultivars and farming techniques. Therefore, GHG emissions from producing biodiesel with canola/rapeseed grown in other countries should be very similar to the GHG emissions we modeled for Canadian and U.S. canola, though they could be slightly (and insignificantly) higher or lower. At any rate, even if there were unexpected larger differences, EPA believes the small amounts of feedstock or fuel potentially coming from other countries will not impact our threshold analysis. Therefore, EPA interprets the approved canola pathway as covering canola/rapeseed regardless of country of origin.

We are also correcting an inadvertent omission to the proposal which incorrectly did not include a pathway for producing naphtha from switchgrass and miscanthus; this pathway was included in the original March 2010 RFS final rule. This pathway also incorporates the additional energy grass feedstock sources being added today, namely energy cane.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action.'' Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. The corrections, clarifications, and modifications to the final March 2010 RFS regulations contained in this rule are within the scope of the information collection requirements submitted to the Office of Management and Budget (OMB) for the final March 2010 RFS regulations.

OMB has approved the information collection requirements contained in the existing regulations at 40 CFR part 80, subpart M under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* and has assigned OMB control numbers 2060– 0637 and 2060–0640. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this action on small entities, I certify that this rule will not have a significant economic impact on a substantial number of small entities. This rule will not impose any new requirements on small entities. The relatively minor corrections and modifications this rule makes to the final March 2010 RFS regulations do not impact small entities.

D. Unfunded Mandates Reform Act

This rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. We have determined that this action will not result in expenditures of $100 million or more for the above parties and thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. It only applies to gasoline, diesel, and renewable fuel producers, importers, distributors and marketers and makes

relatively minor corrections and modifications to the RFS regulations.

E. Executive Order 13132 (Federalism)

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action only applies to gasoline, diesel, and renewable fuel producers, importers, distributors and marketers and makes relatively minor corrections and modifications to the RFS regulations. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

This rule does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It applies to gasoline, diesel, and renewable fuel producers, importers, distributors and marketers. This action makes relatively minor corrections and modifications to the RFS regulations, and does not impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This rulemaking does not change any programmatic structural component of the RFS regulatory requirements. This rulemaking does not add any new requirements for obligated parties under the program or mandate the use of any of the new pathways contained in the rule. This rulemaking only makes a determination to qualify new fuel pathways under the RFS regulations, creating further opportunity and flexibility for compliance with the Energy Independence and Security Act of 2007 (EISA) mandates.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. These amendments would not relax the control measures on sources regulated by the RFS regulations and therefore would not cause emissions increases from these sources.

K. Congressional Review Act

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. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

V. Statutory Provisions and Legal Authority

Statutory authority for the rule finalized today can be found in section 211 of the Clean Air Act, 42 U.S.C. 7545. Additional support for today's rule comes from Section 301(a) of the Clean Air Act, 42 U.S.C. 7414, 7542, and 7601(a).

List of Subjects in 40 CFR Part 80

Environmental protection, Administrative practice and procedure, Agriculture, Air pollution control, Confidential business information, Diesel Fuel, Energy, Forest and Forest Products, Fuel additives, Gasoline, Imports, Labeling, Motor vehicle pollution, Penalties, Petroleum, Reporting and recordkeeping requirements.

Dated: February 22, 2013.

Bob Perciasepe,

Acting Administrator.

For the reasons set forth in the preamble, 40 CFR part 80 is amended as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

■ 1. The authority citation for part 80 continues to read as follows:

Authority: 42 U.S.C. 7414, 7521(1), 7545 and 7601(a).

■ 2. Section 80.1401 is amended by adding definitions of ''Energy cane,'' ''Renewable gasoline'' and ''Renewable gasoline blendstock'' in alphabetical order to read as follows:

§ 80.1401 Definitions.

* * * * *

Energy cane means a complex hybrid in the Saccharum genus that has been bred to maximize cellulosic rather than sugar content. For the purposes of this section, energy cane excludes the species *Saccharum spontaneum*, but includes hybrids derived from *S.*

spontaneum that have been developed and publicly released by USDA.

* * * * *

Renewable gasoline means renewable fuel made from renewable biomass that is composed of only hydrocarbons and which meets the definition of gasoline in § 80.2(c).

Renewable gasoline blendstock means a blendstock made from renewable biomass that is composed of only hydrocarbons and which meets the definition of gasoline blendstock in § 80.2(s).

* * * * *

■ 3. Section 80.1426 is amended by revising Table 1 in paragraph (f)(1) to read as follows:

§ 80.1426 How are RINs generated and assigned to batches of renewable fuel by renewable fuel producers or importers?

* * * * *

(f) * * *

(1) * * *

TABLE 1 TO § 80.1426—APPLICABLE D CODES FOR EACH FUEL PATHWAY FOR USE IN GENERATING RINS

	Fuel type	Feedstock	Production process requirements	D–Code
A	Ethanol	Corn starch	All of the following: Dry mill process, using natural gas, biomass, or biogas for process energy and at least two advanced technologies from Table 2 to this section.	6
B	Ethanol	Corn starch	All of the following: Dry mill process, using natural gas, biomass, or biogas for process energy and at least one of the advanced technologies from Table 2 to this section plus drying no more than 65% of the distillers grains with solubles it markets annually.	6
C	Ethanol	Corn starch	All of the following: Dry mill process, using natural gas, biomass, or biogas for process energy and drying no more than 50% of the distillers grains with solubles it markets annually.	6
D	Ethanol	Corn starch	Wet mill process using biomass or biogas for process energy.	6
E	Ethanol	Starches from crop residue and annual covercrops.	Fermentation using natural gas, biomass, or biogas for process energy.	6
F	Biodiesel, renewable diesel, jet fuel and heating oil.	Soy bean oil; Oil from annual covercrops; Algal oil; Biogenic waste oils/fats/greases; Non-food grade corn oil *Camelina sativa* oil.	One of the following: Trans-Esterification Hydrotreating Excluding processes that co-process renewable biomass and petroleum.	4
G	Biodiesel, heating oil.	Canola/Rapeseed oil	Trans-Esterification using natural gas or biomass for process energy.	4
H	Biodiesel, renewable diesel, jet fuel and heating oil.	Soy bean oil; Oil from annual covercrops; Algal oil; Biogenic waste oils/fats/greases; Non-food grade corn oil *Camelina sativa* oil.	One of the following: Trans-Esterification Hydrotreating Includes only processes that co-process renewable biomass and petroleum.	5
I	Naphtha, LPG	*Camelina sativa* oil	Hydrotreating	5
J	Ethanol	Sugarcane	Fermentation	5
K	Ethanol	Cellulosic Biomass from crop residue, slash, pre-commercial thinnings and tree residue, annual covercrops, switchgrass, miscanthus, and energy cane; cellulosic components of separated yard waste; cellulosic components of separated food waste; and cellulosic components of separated MSW.	Any	3
L	Cellulosic diesel, jet fuel and heating oil.	Cellulosic Biomass from crop residue, slash, pre-commercial thinnings and tree residue, annual covercrops, switchgrass, miscanthus, and energy cane; cellulosic components of separated yard waste; cellulosic components of separated food waste; and cellulosic components of separated MSW.	Any	7
M	Renewable gasoline and renewable gasoline blendstock.	Cellulosic Biomass from crop residue, slash, pre-commercial thinnings, tree residue, annual cover crops; cellulosic components of separated yard waste; cellulosic components of separated food waste; and cellulosic components of separated MSW.	Catalytic Pyrolysis and Upgrading, Gasification and Upgrading, Thermo-Catalytic Hydrodeoxygenation and Upgrading, Direct Biological Conversion, Biological Conversion and Upgrading, all utilizing natural gas, biogas, and/or biomass as the only process energy sources Any process utilizing biogas and/or biomass as the only process energy sources.	3
N	Naphtha	Cellulosic biomass from switchgrass, miscanthus, and energy cane.	Gasification and upgrading	3
O	Butanol	Corn starch	Fermentation; dry mill using natural gas, biomass, or biogas for process energy.	6

TABLE 1 TO § 80.1426—APPLICABLE D CODES FOR EACH FUEL PATHWAY FOR USE IN GENERATING RINS—Continued

	Fuel type	Feedstock	Production process requirements	D–Code
P	Ethanol, renewable diesel, jet fuel, heating oil, and naphtha.	The non-cellulosic portions of separated food waste.	Any	5
Q	Biogas	Landfills, sewage waste treatment plants, manure digesters.	Any	5
R	Ethanol	Grain Sorghum	Dry mill process using biogas from landfills, waste treatment plants, and/or waste digesters, and/or natural gas, for process energy.	6
S	Ethanol	Grain Sorghum	Dry mill process, using only biogas from landfills, waste treatment plants, and/or waste digesters for process energy and for on-site production of all electricity used at the site other than up to 0.15 kWh of electricity from the grid per gallon of ethanol produced, calculated on a per batch basis.	5

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[FR Doc. 2013–04929 Filed 3–4–13; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 219

[Docket No. FRA–2010–0155]

RIN 2130–AC24

Control of Alcohol and Drug Use: Addition of Post-Accident Toxicological Testing for Non-Controlled Substances

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: In 1985, FRA implemented a post-accident toxicological testing (post-accident testing) program to test railroad employees who had been involved in serious train accidents for alcohol and certain controlled substances (marijuana, cocaine, phencyclidine (PCP), and selected opiates, amphetamines, barbiturates, and benzodiazepines). This final rule adds certain non-controlled substances with potentially impairing side effects to its standard post-accident testing panel. The non-controlled substances include tramadol and sedating antihistamines. This final rule makes clear that FRA intends to keep the post-accident test results for these non-controlled substances confidential while it continues to obtain and analyze data on the extent to which prescription and over-the-counter (OTC) drug use by railroad employees potentially affects rail safety.

DATES: This rule is effective on May 6, 2013. Petitions for reconsideration must be received on or before May 6, 2013. Petitions for reconsideration will be posted in the docket for this proceeding. Comments on any submitted petition for reconsideration must be received on or before June 18, 2013.

ADDRESSES: Petitions for reconsideration or comments on such petitions: Any petitions and any comments to petitions related to Docket No. FRA–2010–0155, may be submitted by any of the following methods:

- *Online:* Comments should be filed at the Federal eRulemaking Portal, *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Management Facility, U.S. DOT, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* Room W12–140 on the Ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except federal holidays.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. All petitions and comments received will be posted without change to *http://www.regulations.gov*; this includes any personal information. Please see the Privacy Act heading in the ''Supplementary Information'' section of this document for Privacy Act information related to any submitted petitions or materials.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to Room W12–140 on the Ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Patricia V. Sun, Trial Attorney, Office of Chief Counsel, Mail Stop 10, FRA, 1200 New Jersey Avenue SE. Washington, DC 20590 (telephone 202–493–6060), *patricia.sun@dot.gov.*

SUPPLEMENTARY INFORMATION:

The NPRM

In 1985, to further its accident investigation program, FRA began conducting alcohol and drug tests on railroad employees who had been involved in serious train accidents that met its specified criteria for post-accident testing (*see* 49 CFR 219.201). Since the program's inception, FRA has routinely conducted post-accident tests for alcohol and for certain drugs classified by the Drug Enforcement Administration (DEA) as controlled substances because of their potential for abuse or addiction. *See* the Controlled Substances Act (CSA), Title II of the Comprehensive Drug Abuse Prevention Substances Act of 1970 (CSA, 21 U.S.C. 801 et seq.). As noted in the NPRM, FRA has historically conducted post-accident tests for alcohol and marijuana, cocaine, phencyclidine (PCP), and certain opiates, amphetamines, barbiturates, and benzodiazepines. The purpose of these tests is to determine if alcohol misuse or drug abuse played a role in the occurrence or severity of an accident.

On May 17, 2012, FRA proposed to add routine post-accident tests for certain non-controlled substances with potentially impairing side effects (77 FR 29307). As discussed in the NPRM, studies have shown a significant increase in the daily use of prescription drugs, OTC drugs, vitamins, and herbal

and dietary supplements by both railroad workers and the general population. Although most prescription drugs and all OTC drugs are non-controlled substances, many commonly used ones, such as antihistamines and muscle relaxants (e.g., tramadol), carry warning labels against driving or moving heavy machinery because of their potential sedating effects. Furthermore, even prescription and OTC drugs that do not carry such warnings can have unintended side effects when taken in combination with other drugs, when not used in accordance with directions, or when a user has an unusual reaction.

In the NPRM, FRA discussed testing for two non-controlled substances: (1) Tramadol, which is available only by prescription, and (2) sedating antihistamines, which are available at both prescription and OTC dosages. FRA asked for comment on how the agency should handle test results for these first non-controlled substances to be tested for routinely in its post-accident testing program. In the NPRM, FRA proposed to continue its research testing related to sedating antihistamines and keep the test results confidential and not report to the relevant railroad or employee any sedating antihistamine post-accident test results. In the NPRM, FRA noted that although tramadol is a non-controlled substance, it is a prescription-only semi-synthetic opioid that can cause dizziness, and sought comment on how it should handle tramadol post-accident test results. FRA specifically requested comment as to whether the agency should release post-accident test results for tramadol as it does for other opioids that are controlled substances.

The NPRM also contained two announcements. To make its post-accident testing requirements and procedures easier to understand, FRA announced that its standard post-accident testing box would include new information and an updated and simplified form and instructions. FRA also announced that it was amending Appendix B to 49 CFR part 219 to designate Quest Diagnostics in Tucker, Georgia as its post-accident testing laboratory.

Comments on the NPRM

FRA received seven comments on the NPRM. FRA received comments from the Association of American Railroads (AAR), the American College of Occupational and Environmental Medicine (ACOEM), and a joint submission from the American Train Dispatchers Association, the Brotherhood of Locomotive Engineers and Trainmen, the Brotherhood of Maintenance of Way Employes Division, the Brotherhood of Railroad Signalmen, and the United Transportation Union (collectively referred to as ''Rail Labor''); with the Transportation Trades Division, AFL-CIO filing a comment in support. FRA also received individual comments from three health care professionals (HCPs). FRA addresses the common issues raised by the commentators below instead of addressing each comment separately.

The Addition of Post-Accident Tests for Tramadol and Sedating Antihistamines

Comment was divided on FRA's proposal to add routine post-accident tests for non-controlled substances such as tramadol and sedating antihistamines. Rail Labor representatives, who were uniformly opposed, asserted that conducting post-accident tests for legal drugs would discourage railroad employees from using necessary prescription and OTC drugs, and that the resulting risks from untreated medical conditions could outweigh the possible adverse effects from the medications used to treat them. Rail Labor representatives also stressed the privacy interests employees have in their medical information and expressed concerns that the release of positive test results for sedating antihistamines could cause an employee to suffer discipline or dismissal for the use of a legal substance. The AAR supported FRA's proposal, and the ACOEM was strongly in favor of post-accident testing for non-controlled substances as a necessary first step in increasing employee and employer awareness of the risks of unintended drug interactions from polypharmacy (the use of multiple prescription and OTC drugs). The HCPs who submitted comments had varied views. One HCP supported the addition of sedating antihistamines, but not tramadol, because the HCP considered it to be a ''mild opioid.'' Another HCP supported the addition of both substances because of their tendency to induce drowsiness, but added that FRA needed to address the issue of fatigue among railroad workers. A third HCP, noting that any substance, including water, can be problematic if taken incorrectly or in too large amounts, questioned how FRA had selected tramadol and the four sedating antihistamines mentioned in the NPRM for post-accident testing.

Some commentators questioned whether FRA had proven that post-accident testing for non-controlled substances was necessary. Rail Labor pointed out that the independent studies FRA cited in the NPRM (Slone Epidemiology Center at Boston University, Patterns of Medications Use in the United States (2006), and National Community Pharmacists Association, Take as Directed: A Prescription Not Followed (2006)) concerned the prevalence of prescription and OTC drug use among the population in general, and not railroad workers in particular. An HCP also expressed the view that FRA had not shown that medication use was prevalent in the rail industry.

FRA notes that commenters provided no evidence that the use of prescription and OTC drugs by the railroad employee population is different than that of the general population studied in *Slone* and *National Community*. In 2006, FRA published a study that it had commissioned from Foster-Miller, Inc. (GERTLER, J., HARTENBAUM, N., MD, VIALE, A., WITTELS, E., MD, S. ELLIS, ESQ. (2005) MEDICAL STANDARDS FOR RAILROAD WORKERS), which found over 60 percent of U.S. railroad workers to be males between 45–64 years of age. That same year, *Slone* found that 30 percent of men between 45–64 years old self-reported using five or more prescription and OTC drugs in a week, while the corresponding figure for men between 18–44 years old was only eight percent. *Slone* concluded that the nearly one third of older men who use at least five drugs a week are at greater risk for unintended drug interactions.

Moreover, FRA's own research studies provided anecdotal evidence of multiple drug use among railroad employees. As discussed in the NPRM, from April 2002 to April 2009, FRA asked railroad employees who had been involved in reportable (*see* FRA's accident reporting regulations at 49 CFR part 225) human-factor accidents to complete surveys on their recent prescription and OTC drug use. In eighty percent of the 294 railroad accidents at least partially attributed to human error during this period, one or more of the employees involved reported using at least one generic or brand name drug, and many employees reporting the use of multiple substances, including not only prescription and OTC drugs, but also herbal remedies and dietary supplements. FRA believes the actual use of prescription and OTC drugs by railroad employees is likely higher than that indicated in these self-reports, since some survey respondents may have omitted or forgotten drugs that they had used.

Rail Labor representatives commented that FRA had no data linking the use of tramadol or sedating antihistamines to an increased risk of rail accidents,

whether due to an adverse side effect of the drug or an employee's failure to comply with HCP or manufacturer directions. This is correct. As FRA noted in the NPRM, FRA proposes to conduct post-accident testing for tramadol and sedating antihistamines for research purposes only to obtain such data and to determine whether their use presents a safety issue in the railroad industry. While the addition of any drug to FRA's post-accident testing panel indicates that the drug is of safety concern to FRA, FRA's purpose in adding routine post-accident tests for non-controlled substances is to obtain data, not to deter the use of legal drugs by railroad employees. FRA would not be fulfilling its accident investigation mission if it did not research the impact of legal drugs on the occurrence or severity of significant rail accidents, including the potential risks of using drugs with known adverse effects and the potential risks of using multiple prescription and OTC drugs which may cause unintended drug interactions.

One HCP cited several studies on the sedating effects of various antihistamines and asked how FRA decided to select diphenhydramine, chlorpheniramine, bromenphiramine, and doxylamine for post-accident testing. To clarify, FRA listed these drugs simply as examples, and not as an exhaustive list, of the sedating antihistamines that would be added to FRA's drug panel. As stated in the NPRM, the sedating antihistamines category ''includes, *but is not limited to,* diphenhydramine, chlorpheniramine, bromenphiramine, and doxylamine'' (77 FR at 29308, emphasis added). As explained below, the purpose of FRA post-accident testing is to obtain data on the *potential* causes of major railroad accidents. FRA's ability to do so would be hampered if it could only post-accident test for four of the drugs in the sedating antihistamine class.

FRA is selecting tramadol and sedating antihistamines, both of which can cause drowsiness, as the initial non-controlled substances to be added to its standard post-accident testing panel. The widely used painkiller tramadol is a synthetic opioid similar to other synthetic opioids such as the controlled substances oxycodone and methadone. The use of sedating antihistamines, which is even more common, has been studied by the National Highway Traffic Safety Administration (NHTSA), which expressed concerns that ''first generation antihistamines produce objective signs of skills performance impairment as well as subjective symptoms of sedation.'' *See* MOSKOWITZ AND WILKINSON, ANTIHISTAMINE AND DRIVING–RELATED BEHAVIOR: A REVIEW OF THE EVIDENCE FOR IMPAIRMENT (2004). As explained in the NPRM, the addition of tramadol and sedating antihistamines to FRA's standard post-accident drug panel does not limit FRA's ability to conduct post-accident tests for other non-controlled substances, whether to investigate an individual accident or to conduct additional research.

The Reporting of Post-Accident Test Results for Non-Controlled Substances

As noted above, in the NPRM, FRA asked for comment on how it should handle post-accident test results for non-controlled substances such as sedating antihistamines and tramadol. Comment was divided on the issue of whether FRA should report tramadol post-accident test results. Rail Labor representatives and one HCP objected to the release of results for tramadol, on the grounds that it is a mild opioid that is not a controlled substance. Conversely, the AAR argued that as the primary guardians of rail safety, railroads had a need to know both tramadol and sedating antihistamines results to be able to address any concerns that could affect safe operations. With the exception of the AAR, all commentators supported FRA's proposal to continue the practice of not reporting post-accident test results for sedating antihistamines.

After reviewing the comments, FRA has decided to maintain its proposal to treat post-accident test results for non-controlled substances (including sedating antihistamines and tramadol) confidential. To this end, FRA is revising the regulatory text of § 219.211(b) as proposed in the NPRM to limit the reporting of post-accident testing results to results for controlled substances only. An employee's use of a non-controlled substance is legal and generally subject to few restrictions, and FRA is not convinced at this time that a railroad has a safety need to know whether an employee is using a non-controlled substance while subject to performing covered service. Thus, FRA will not report non-controlled substance post-accident test results to the railroads. FRA will report a post-accident test result for a non-controlled substance to an employer or a third party only if an employee has provided specific written consent for release of his or her test result to the employer or third party. (As has been its standard practice, FRA may also provide post-accident test results and post-mortem specimens to the National Transportation Safety Board upon request. *See* § 219.211(f) and (h).) Except for these limited circumstances, all post-accident test results for non-controlled substances will be kept confidential. FRA will, however, continue to monitor its post-accident test results and other data to see if changes in policy or additional action are needed.

The Nature of FRA Post-Accident Testing

Several comments concerned both the addition of non-controlled substances to post-accident tests and FRA post-accident testing in general. An HCP commented that since the purpose of post-accident testing is to prevent accidents, FRA would better address non-controlled substance use by expanding the scope of its prohibitions instead of its post-accident testing program. Rail Labor representatives commented that FRA post-accident testing was exempt from DOT testing procedures (*see* Procedures for Transportation Workplace Drug and Alcohol Testing Programs (49 CFR part 40)) only by ''dint of history,'' and that the proposed addition of non-controlled substances would make FRA's post-accident testing panel inconsistent with the drug panels used by other DOT programs. To address these comments, some of which reflect misperceptions of the nature and history of the program, FRA is providing an overview of the program's fundamentals.

While the purpose of other DOT agency workplace testing programs is to detect or deter drug abuse, the purpose of FRA post-accident testing is not to prevent, but to investigate the causes of significant railroad accidents and incidents; this is why the FRA's post-accident testing program has always tested for more controlled substances (e.g., barbiturates and benzodiazepines) than do other DOT agency testing programs. Furthermore, an examination of the history of FRA post-accident testing reveals that the program's exemption from part 40 coverage was deliberate. FRA pioneered transportation workplace testing (*see* Final Rule implementing FRA reasonable suspicion and post-accident testing, 50 FR 31508, August 2, 1985), and the Supreme Court upheld the Constitutionality of both programs in *Skinner* v. *RLEA,* 489 U.S. 602, 109 S. Ct. 1402 (1989). Congress took notice of this Court decision two years later when it enacted the Omnibus Transportation Employee Testing Act of 1991 (''Omnibus Act,'' Pub. L 102–143, Oct. 28, 1991), by specifically exempting FRA post-accident testing from the Act, which required DOT and six of its operating administrations to implement

transportation workplace testing programs in accordance with standards set by the Department of Health and Human Services (HHS). DOT in turn exempted FRA post-accident testing from its part 40 procedures (*see* § 40.1(c)), which implemented the Omnibus Act's mandates and govern all other types of FRA and DOT testing.

Although FRA encourages railroad employees to seek drugs with fewer potential side effects, FRA does not believe the addition of non-controlled substances to post-accident tests will discourage employees from seeking necessary treatment. As stated above, FRA will not report post-accident test results for non-controlled substances except with the permission of the employee. Moreover, the average employee will finish his or her railroad career without ever being required to provide post-accident test specimens. The number of post-accident tests conducted annually is only a fraction of the total number of FRA drug and alcohol tests conducted each year, because post-accident tests are conducted only on employees involved in rail accidents or incidents that meet FRA's criteria for a ''qualifying event'' (*see* the four types of qualifying events described in § 219.201). In 2011, for example, there were only 87 qualifying events in which a total of 195 railroad employees were post-accident tested. This means that 195 post-accident drug tests and 195 post-accident alcohol tests were administered in 2011, while during that same year a total of 34,093 random drug tests and 42,289 random alcohol tests were administered to railroad employees. As previously mentioned, FRA has designated Quest Diagnostics as its post-accident testing laboratory. Again unlike other workplace testing programs, FRA post-accident testing specimens are analyzed only at a single laboratory. To be awarded the contract as FRA's designated post-accident testing laboratory, a laboratory must be able to meet not only the technical qualifications for HHS laboratory certification but also qualifications set by FRA specifically for its post-accident testing program. These include the capability to analyze a wider variety of specimens (unique among DOT testing programs, FRA post-accident tests blood from surviving employees and tissue and fluid specimens from fatalities), for a wider variety of substances (e.g., barbiturates, carbon monoxide) at lower levels of detection than other HHS-certified laboratories. FRA audits the post-accident laboratory's compliance and quality each quarter.

Rail Labor representatives also expressed misgivings related to railroad availability policies, unpredictable work schedules, and FRA post-accident testing cutoffs. Their concern was that a railroad employee could test above the cutoff for tramadol or a sedating antihistamine if the employee used the substance, received an unexpected call for duty, and was later involved in an accident or incident that qualified for post-accident testing. For the reasons outlined below, FRA believes this misgiving is unfounded.

FRA has consulted with forensic toxicologists to establish post-accident screening and confirmation cut-offs for tramadol and sedating antihistamines, as appropriate for purposes of accident investigation. The purpose of random and other types of workplace tests is to detect whether a substance or its metabolite in present in an employee's system, with the ultimate goal of deterring or detecting substance abuse. This is not the case with FRA post-accident testing. With the exception of major train accidents, where all crew members involved must be tested, a railroad supervisor on the scene must make a good faith determination that an employee may have played a role in the cause or severity of an accident before the employee is post-accident tested. When a significant accident occurs, the special features of the program—the requirement to collect blood from surviving employees, the requirement to collect and test specimens from fatalities, the requirement to use only FRA-issued specimen collection kits and forms, the requirement to follow FRA-only collection procedures, the requirement that all specimens be shipped to a single laboratory for analysis, the requirement that this laboratory exceed the qualifications for HHS certification, and the requirement that all test results be reviewed by FRA, which has sole control over whether they are reported to employees and employers—enable FRA to collect data as one part of its investigation of the cause of the accident. (*See* Appendix C to 49 CFR part 219.) Because the ultimate purpose of FRA's post-accident testing program is to determine the cause of an accident, an employee's post-accident test result is just one of the many things FRA investigates. The mere presence of a substance or metabolite in an employee's system is never considered in isolation and FRA retains control of all post-accident specimens and results to ensure that a post-accident test result is interpreted in the context of the overall investigation.

Accidents can occur at any time, under different circumstances, and for a variety of reasons. For this reason FRA will maintain its practice of adjusting the substances, cutoffs and protocols in its post-accident testing program without notice and as it has done since the program's inception. When a major accident happens, FRA cannot wait for notice and comment before deciding whether to test for a substance that is not on its routine post-accident testing panel if preliminary investigation shows the substance may have played a role in the accident's occurrence or severity. Publication of this final rule provides notice that FRA will routinely conduct post-accident tests for non-controlled substances but does not provide precedent that FRA will publish notice of future changes to its post-accident testing program.

Rail Labor representatives also questioned why FRA was proposing to add post-accident tests for prescription and OTC drugs, given the conclusions of a Working Group tasked by the Railroad Safety Advisory Committee (RSAC) to develop Medical Standards (Task Number 2006–03, Medical Standards for Safety-Critical Personnel). According to these commentators, the Working Group had concluded ''that regulatory treatment of such usage [of prescription drugs, OTC drugs, dietary supplements, and herbal remedies] is inappropriate * * * and that FRA's current Safety Advisory [Safety Advisory 98–3, *Recommended practices for the safe use of prescription and over-the-counter drugs by safety-sensitive railroad employees,* 63 FR 71334, December 24, 1998] continues to sufficiently address recommended practices for safe use of prescription and OTC drugs.'' FRA believes that this characterization by these commentators is incorrect since the Medical Standards Working Group has made no consensus recommendations to the RSAC about the use of medications by safety-sensitive employees and Task 2006–03 remains open.

Finally, with regard to Safety Advisory 98–3, FRA notes that the stated purpose of that Advisory remains as important today as it was when the Advisory was issued—i.e., the recommendations in that Advisory are intended to ensure that transportation employees safely use prescription and OTC drugs. In that Advisory, FRA specifically noted that ''FRA does not have a clear picture of the extent to which the performance of safety-sensitive employees is adversely affected by legal drug use.'' FRA's promulgation of this final rule adding certain non-controlled substances to its standard post-accident testing panel is one step toward FRA's longstanding

goal of determining whether the performance of safety-sensitive employees is adversely affected by the use of prescription and OTC drugs.

Contents of Standard Post-Accident Testing Box

As announced in the NPRM, FRA is amending the contents of its standard post-accident testing box. FRA is adding guidance on the basis, purpose, and requirements of its post-accident testing program and updating the information requests in FRA F 6180.74, Post-Accident Testing Blood/Urine Custody and Control Form. These amendments should make FRA's post-accident testing collection and shipping requirements easier to understand and follow. (FRA is not changing the contents of its fatalities post-accident testing box or changing the other form in its standard post-accident testing box, Form FRA F 6180.73, Accident Information Required for Post-Accident Toxicological Testing.)

Section-by-Section Analysis

Section 219.5—Definitions

FRA received no comment on its proposed definition of a non-controlled substance and is adding the definition as proposed.

Section 219.13—Preemptive Effect

FRA received one comment from an HCP who supported removal and reservation of this section. As proposed, FRA is removing the preemption language in paragraph (a) of this section because part 219 has preemptive effect by operation of law under the Federal Rail Safety Act (FRSA). *See* 49 U.S.C. 20106. Also as proposed, FRA is moving the language in paragraph (b) of this section to a new paragraph (c) of § 219.17.

Section 219.17—Construction

As discussed in the paragraph above and as proposed in the NPRM, FRA is adding a new paragraph (c) to this section to replace the language formerly contained in § 219.13(b). This new paragraph states that part 219 does not impact State criminal laws imposing sanctions for reckless conduct that leads to actual loss of life, injury, or damage to property, whether such provisions apply specifically to railroad employees or the public at large.

Section 219.211—Analysis and Follow-Up

As proposed in the NPRM, in the second sentence of paragraph (a), FRA is replacing the phrase ''alcohol and controlled substances specified by FRA'' with ''alcohol, controlled substances, and non-controlled substances specified by FRA'' to accommodate the addition of routine testing for non-controlled substances to its post-accident testing program. As also proposed in the NPRM, FRA is deleting the reference to submittal of FRA post-accident testing protocols to HHS, since as detailed above, HHS standards do not apply to FRA post-accident testing and FRA is adopting language from the DEA by adding a sentence stating that substances may be tested for in any form, whether naturally or synthetically derived, since controlled substances can be derived from many sources (e.g., opiates can be natural, synthetic, or semi-synthetic in origin).

As discussed above, FRA will keep all non-controlled substance post-accident test results confidential. FRA is therefore amending the first sentence of paragraph (b) as proposed in the NPRM. This change is intended to make clear that FRA will report post-accident test results for controlled substances only.

Although not discussed in the NPRM, FRA is also amending the first sentence of paragraph (f)(1) of this section to state that post-accident test results for non-controlled substances will not be in the final toxicology report included in each FRA accident investigation report. In the NPRM, FRA asked for comment on whether non-controlled substance results should be reported to employers and employees; most commentators favored keeping these post-accident test results confidential. While FRA did not raise the issue of whether non-controlled substance post-accident test results should be included in FRA accident investigation reports, keeping these results confidential from employers and employees would be meaningless if FRA published them in its official reports. FRA will therefore redact non-controlled substance test results from a post-accident toxicology testing report before that report is published as part of an FRA accident investigation report. This amendment is necessary to ensure the complete confidentiality of non-controlled substance post-accident test results.

Appendix B

As announced in the NPRM, FRA is revising Appendix B to this part to designate Quest Diagnostics in Tucker, Georgia as its post-accident testing laboratory.

Regulatory Impact and Notices

A. Executive Order 12866 and 13563 and DOT Regulatory Policies and Procedures

This final rule has been evaluated in accordance with existing policies and procedures under both Executive Order 12866 and 13563 and DOT policies and procedures. *See* 44 FR 11034; February 26, 1979. FRA has prepared and placed in the docket (FRA–2010–0155) a regulatory impact analysis addressing the economic impact of this final rule.

As part of the regulatory impact analysis, FRA has assessed pertinent costs expected from the implementation of this rulemaking. FRA has not found any costs associated with this final rule. Additional costs are assumed by the Federal government in their entirety. Railroads will not be required to change their collection process and will have to follow the same collection, shipping, and handling processes they currently follow. This means that individuals subject to post-accident testing will provide the same specimens currently required, which will then be tested for tramadol and sedating antihistamines at FRA's expense. Since FRA will use these results for research and accident investigation purposes only, tramadol and sedating antihistamines test results will not be reported directly to either the employee or the employing railroad. This reporting process will apply to both surviving and fatally injured employees. No monetary costs will be imposed on the industry as a result of this addition.

As part of the regulatory impact analysis, FRA has explained what the likely benefits for this final rule will be, and provided numerical assessments of the potential value of such benefits. The inclusion of tramadol and sedating antihistamines will generate safety benefits. Qualitative benefits will be generated with the inclusion of sedating antihistamines and tramadol in the post-accident testing panel by providing FRA with the data necessary to carry out research to inform future policy on this topic. The final rule will generate quantifiable benefits upon the addition of sedating antihistamines to the post-accident testing panel by creating a small deterring effect on the use of sedating antihistamines by railroad workers and encouraging the use of alternative medications for allergic relief. A deterring effect will be generated by the regulatory signal FRA is sending to the regulated community about the safety concern related to these non-controlled substances. FRA expects some individuals to alter their usage of these substances and improve safety.

Thus, in general, the final rule will reduce railroad accidents and their associated casualties and damages. FRA believes the value of the anticipated safety benefits will exceed the cost of implementing the final rule. Over a 10-year period, this analysis finds that $2.3 million in benefits will accrue through accident prevention. The discounted value of this is $1.9 million (PV, 7 percent). The table below presents the estimated benefits associated with the final rule.

10-YEAR ESTIMATED BENEFITS OF THE FINAL RULE

[In millions]

	Benefits	PV, 7%
Tramadol	$0	$0
Sedating Antihistamines	2.3	1.9
Total	2.3	1.9

Dollars are discounted at a Present value rate of 7 percent.

Regulatory Flexibility Act—Certification of No Significant Economic Impact on a Substantial Number of Small Entities

FRA developed the final rule in accordance with Executive Order 13272 (''Proper Consideration of Small Entities in Agency Rulemaking'') and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) to ensure potential impacts of rules on small entities are properly considered. FRA certified pursuant to the Regulatory Flexibility Act (5 U.S.C. 605(b)) in the NPRM. Furthermore, FRA invited all interested parties to submit data and information regarding this certification and did not receive any comments about it during the public comment period.

The Regulatory Flexibility Act requires an agency to review regulations to assess their impact on small entities. An agency must conduct a regulatory flexibility analysis unless it determines and certifies that a rule is not expected to have a significant economic impact on a substantial number of small entities.

Consistent with societal trends, FRA is concerned about the increasing use of non-controlled drugs in the railroads labor force. With this final rule FRA will learn about the impact of some of these non-controlled substances on railroad safety by updating the definition of non-controlled substances, changing the reporting requirements related to the drug panel change, and including more drugs in the current post-accident testing panel. This Regulatory Flexibility Impact Analysis is presented to comply with Executive Order 13272 and with the Regulatory Flexibility Act as part of the formal rulemaking process required by law.

The final regulation is amending §§ 219.5 and 219.211 by providing for the routine post-accident testing for non-controlled substances. FRA will treat post-accident test results for non-controlled substances as confidential and will not disclose such results to the relevant railroad or employee.

I. Description of Regulated Entities and Impacts

The ''universe'' of the entities under consideration includes only those small entities that can reasonably be expected to be directly affected by the provisions of this final rule. For this final rule there is only one type of small entity that is affected: small railroads.

''Small entity'' is defined in 5 U.S.C. 601. Section 601(3) defines a ''small entity'' as having the same meaning as ''small business concern'' under § 3 of the Small Business Act. This includes any small business concern that is independently owned and operated, and is not dominant in its field of operation. Section 601(4) likewise includes within the definition of ''small entities'' not-for-profit enterprises that are independently owned and operated, and are not dominant in their field of operations. Additionally, 5 U.S.C. 601(5) defines ''small entities'' as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations less than 50,000.

The U.S. Small Business Administration (SBA) stipulates ''size standards'' for small entities. It provides that the largest a for-profit railroad business firm may be (and still classify as a ''small entity'') is 1,500 employees for ''Line-Haul Operating'' railroads, and 500 employees for ''Short-Line Operating'' railroads.[1]

Federal agencies may adopt their own size standards for small entities in consultation with SBA, and in conjunction with public comment. Pursuant to the authority provided to it by SBA, FRA has published a final policy, which formally establishes small entities as railroads that meet the line haulage revenue requirements of a Class III railroad.[2] Currently, the revenue requirements are $20 million or less in annual operating revenue, adjusted annually for inflation. The $20 million limit (adjusted annually for inflation) is based on the Surface Transportation Board's threshold of a Class III railroad, which is adjusted by applying the railroad revenue deflator adjustment.[3] FRA is using this definition for this final rule.

Railroads

FRA regulates a total 756 railroads. However, only 644 could be considered to be small for the purposes of this analysis because 7 are large Class I freight railroads, Amtrak and 26 commuter railroads serving communities larger than 50,000 people, and 12 are Class II railroads. All these railroads are not considered to be small. The rest of the railroads not included in this analysis do not operate in the general railroad system and are not subject to the final regulation. Two commuter railroads were included in this analysis, the Hawkeye Express and the Saratoga & North Creek Railway. The Hawkeye Express provides commuter service to Iowa City and is owned by a Class III railroad, a small entity. The Saratoga & North Creek Railway started operations in 2011, serving several stations between North Creek and Saratoga Springs, New York with three trains a day and meets the criteria to be considered a small entity.

Type of railroad	Total	Railroads that do not operate in general system	Small
Freight Class I	7	0	0
Freight Class II	12	0	0
Freight Class III	708	66	642
Amtrak	1	0	0

[1] ''Table of Size Standards,'' U.S. Small Business Administration, January 31, 1996, 13 CFR Part 121.

[2] See 68 FR 24891 (May 9, 2003).

[3] For further information on the calculation of the specific dollar limit, please see 49 CFR Part 1201.

Type of railroad	Total	Railroads that do not operate in general system	Small
Commuter	28	0	2
Total	756	66	644

It is important to note that the small entities being considered in this analysis are knowledgeable about current post-accident testing requirements. Most small railroads have experience on carrying out a post-accident test. Data from the FRA's Drug and Alcohol Program reveals that generally, about 4 or 5 percent of all post-accident testing qualifying events involve a small railroad. For example, in 2011 with a total of 87 post-accident testing events, four implicated Class III railroads. Similarly, in 2010, 85 post-accident testing events involved four Class III railroads.

This final rule does not increase costs for small railroads. The cost for testing additional drugs will be paid by the FRA through existing contracts. Railroads will follow the same collection and shipping process for urine and blood samples that is currently in place. Results originating from this regulatory change will only be used by FRA for research and investigation purposes only and will not be shared with external entities. Therefore, in the eventuality that an employee from a small railroad is found positive on any of these non-controlled substances neither the railroad nor the employee will face additional expenses to respond to that finding.

Significant Economic Impact Criteria

Previously, FRA sampled small railroads and found that revenue averaged approximately $4.7 million (not discounted) in 2006. One percent of that average annual revenue per small railroad is $47,000. FRA realizes that some railroads will have a lower revenue than $4.7 million. However, FRA estimates that small railroads will not have any additional expenses over the next ten years to comply with the new requirements in this final regulation. Based on this, FRA concludes that the expected burden of this final rule will not have a significant impact on the competitive position of small entities, or on the small entity segment of the railroad industry as a whole.

Substantial Number Criteria

This final rule will likely burden all small railroads that are not exempt from its scope or application (See 49 CFR 219.3). Thus, as noted above this final rule will impact a substantial number of small railroads.

II. Certification

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 605(b)), FRA certifies that this final rule will not have a significant economic impact on a substantial number of small entities. FRA invited all interested parties to submit data and information regarding the potential economic impact that will result from adoption of the proposals in the NPRM. FRA did not receive any comments concerning this certification in the public comment process.

Paperwork Reduction Act

The information collection requirements in this rule are being submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The section that contains the revised information collection requirement and the estimated time to fulfill that requirement is as follows:

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
219.211—Analysis and Follow-up—Reports of Positive Post-Accident Toxicological Test (Controlled Substances) to Medical Review Officer and Employee (Revised Requirement).	698 railroads	16 reports + 16 report copies.	15 minutes + 5 minutes.	5

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), FRA solicits comments concerning: whether these information collection requirements are necessary for the proper performance of the functions of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. For information or a copy of the paperwork package submitted to OMB, contact Mr. Robert Brogan, Information Clearance Officer, at 202–493–6292, or Ms. Kimberly Toone at 202–493–6132.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to Mr. Robert Brogan or Ms. Kimberly Toone, Federal Railroad Administration, 1200 New Jersey Avenue SE., 3rd Floor, Washington, DC 20590. Comments may also be submitted via email to Mr. Brogan or Ms. Toone at the following address: *Robert.Brogan@dot.gov; Kim.Toone@dot.gov.*

OMB is required to make a decision concerning the collection of information requirements contained in this rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

FRA is not authorized to impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of the final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

Federalism Implications

Executive Order 13132, ''Federalism'' (64 FR 43255, Aug. 4, 1999), requires FRA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, the agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or the agency consults with State and local government officials early in the process of developing the regulation. Where a regulation has federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation. FRA has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 13132. FRA believes this final rule it is in compliance with Executive Order 13132.

This final rule will not have a substantial effect on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. In addition, this final rule will not have any federalism implications that impose substantial direct compliance costs on State and local governments.

This final will have preemptive effect by operation of law under certain provisions of the Federal railroad safety statutes, specifically the former Federal Rail Safety Act (FRSA), repealed and recodified at 49 U.S.C 20106. The former FRSA provides that States may not adopt or continue in effect any law, regulation, or order related to railroad safety or security that covers the subject matter of a regulation prescribed or order issued by the Secretary of Transportation (with respect to railroad safety matters) or the Secretary of Homeland Security (with respect to railroad security matters), except when the State law, regulation, or order qualifies under the ''local safety or security hazard'' exception to section 20106.

Environmental Impact

FRA has evaluated this final rule in accordance with its ''Procedures for Considering Environmental Impacts'' (''FRA's Procedures'') (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 et seq.), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this final rule is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. As a result, FRA finds that this final rule is not a major Federal action significantly affecting the quality of the human environment.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditures by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted annually for inflation with base year of 1995). The value equivalent of $100 million in CY 1950, adjusted annually for inflation to CY 2008 levels by the Consumer Price Index for All Urban Consumers (CPI–U) is $141.3 million. This assessment may be included in conjunction with other assessments, as it is here. This final rule will not create an unfunded mandate in excess of the threshold amount.

Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' 66 FR 28355 (May 22, 2001). Under the Executive Order, a ''significant energy action'' is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this final rule in accordance with Executive Order 13211, and determined that it is not a ''significant regulatory action'' likely to have a significant adverse effect on the supply, distribution, or use of energy.

Privacy Act

Anyone is able to search the electronic form of any comments or other written communications received into any of FRA's dockets, by the name of the individual submitting the comment or other written communication (or signing the comment or other written communication, if submitted on behalf of an association, business, labor union, etc.). *See http://www.regulations.gov/#!privacyNotice* for the privacy notice of regulations.gov, or you may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477).

List of Subjects in 49 CFR Part 219

Alcohol abuse, Drug abuse, Drug testing, Penalties, Railroad safety, Reporting and recordkeeping requirements, Safety, Transportation.

The Rule

For the reasons stated above, FRA amends part 219 of chapter II, subtitle B of title 49, Code of Federal Regulations, as follows:

PART 219—[AMENDED]

■ 1. The authority citation for part 219 is revised to read as follows:

Authority: 49 U.S.C. 20102–20103, 20107, 20140, 21301, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.89.

■ 2. Amend § 219.5 by adding a definition of *Non-controlled substance* to read as follows:

§ 219.5 Definitions.

* * * * *

Non-controlled substance means any substance (including prescription medications, over-the-counter products, dietary supplements, and herbal preparations) which is not currently regulated under 21 U.S.C. 801–971 or 21 CFR part 1308.

* * * * *

§ 219.13 [Removed and Reserved]

■ 3. Remove and reserve § 219.13.

■ 4. Revise § 219.17 to read as follows:

§ 219.17 Construction.

Nothing in this part—

(a) Restricts the power of FRA to conduct investigations under sections 20107, 20108, 20111, and 20112 of title 49, United States Code;

(b) Creates a private right of action on the part of any person for enforcement of the provisions of this part or for damages resulting from noncompliance with this part; or

(c) Impacts provisions of State criminal law that impose sanctions for reckless conduct that leads to actual loss of life, injury or damage to property, whether such provisions apply specifically to railroad employees or generally to the public at large.

■ 5. Amend § 219.211 by revising paragraph (a), the first sentence of paragraph (b), and paragraph (f)(2) to read as follows:

§ 219.211 Analysis and follow-up.

(a) The laboratory designated in appendix B to this part undertakes prompt analysis of provided under this subpart, consistent with the need to develop all relevant information and produce a complete report. Specimens are analyzed for alcohol, controlled substances, and non-controlled substances specified by FRA under protocols specified by FRA. These substances may be tested for in any form, whether naturally or synthetically derived. Specimens may be analyzed for other impairing substances specified by FRA as necessary to the particular accident investigation.

(b) Results of post-accident toxicological testing for controlled substances conducted under this subpart are reported to the railroad's Medical Review Officer and the employee. * * *

* * * * *

(f) * * *

(2) With the exception of post-accident test results for non-controlled substances, the toxicology report is a part of the report of the accident/incident and therefore subject to the limitation of 49 U.S.C. 20903 (prohibiting use of the report for any purpose in a civil action for damages resulting from a matter mentioned in the report).

* * * * *

■ 6. Revise Appendix B to part 219 to read as follows:

Appendix B to Part 219—Designation of Laboratory for Post-Accident Toxicological Testing

The following laboratory is currently designated to conduct post-accident toxicological analysis under subpart C of this part: Quest Diagnostics, 1777 Montreal Circle, Tucker, GA 30084, Telephone: (800) 729–6432.

Issued in Washington, DC, on February 26, 2013.

Joseph C. Szabo,

Administrator.

[FR Doc. 2013–05010 Filed 3–4–13; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 120417412–2412–01]

RIN 0648–XC510

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Gulf of Mexico Reef Fish Fishery; 2013 Accountability Measure for Gulf of Mexico Commercial Gray Triggerfish

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

ACTION: Temporary rule; accountability measures.

SUMMARY: NMFS implements an accountability measure (AM) for commercial gray triggerfish in the Gulf of Mexico (Gulf) reef fish fishery for the 2013 fishing year through this temporary final rule. This temporary rule reduces the Gulf gray triggerfish 2013 commercial annual catch target (ACT) (equal to the commercial quota) to 51,602 lb (23,406 kg), based on the 2012 commercial annual catch limit (ACL) overage. This action is necessary to reduce overfishing of the gray triggerfish resource in the Gulf of Mexico.

DATES: This rule is effective March 5, 2013, through December 31, 2013.

ADDRESSES: Electronic copies of the final rule for Amendment 30A, the temporary rule and associated environmental assessment (EA) for gray triggerfish interim measures, and other supporting documentation may be obtained from Rich Malinowski, NMFS, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701; telephone: 727–824–5305.

FOR FURTHER INFORMATION CONTACT: Rich Malinowski, telephone: 727–824–5305, or email: *Rich.Malinowski@noaa.gov.*

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf is managed under the Fishery Management Plan for Reef Fish Resources of the Gulf (FMP). The FMP was prepared by the Gulf Fishery Management Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622. All gray triggerfish weights discussed in this temporary rule are in round weight.

Background

The reauthorization of the Magnuson-Stevens Act implemented new requirements that ACLs and AMs be established to end overfishing and prevent overfishing from occurring. Accountability measures are management controls to prevent ACLs from being exceeded, and correct or mitigate overages of the ACL if they occur. Section 303(a)(15) of the Magnuson-Stevens Act mandates the establishment of ACLs at a level such that overfishing does not occur in the fishery, including measures to ensure accountability.

On July 3, 2008, NMFS issued a final rule (73 FR 38139) to implement Amendment 30A to the FMP. In part, Amendment 30A established commercial ACLs, commercial quotas (which were set lower than the ACLs to account for management uncertainty) and commercial AMs that would go into effect if the commercial quotas for gray triggerfish are reached or the ACLs are exceeded. In accordance with regulations at 50 CFR 622.49(a)(2)(i), when the applicable quota is reached, or projected to be reached, the Assistant Administrator for Fisheries, NOAA, (AA), will file a notification with the Office of the Federal Register to close the sector for the remainder of the fishing year. If despite such closure, landings exceed the ACL, the AA will reduce the quota the year following an overage by the amount of the ACL overage of the prior fishing year.

The Council requested and NMFS implemented a temporary rule to, in part, reduce the gray triggerfish commercial ACLs and ACTs (equal to the commercial quotas) (77 FR 28308, May 14, 2012). The gray triggerfish commercial sector AMs state that, in accordance with regulations at 50 CFR 622.49(a)(17)(i), when the applicable commercial ACT (commercial quota) is reached, or projected to be reached, the AA will file a notification with the Office of the Federal Register to close

the sector for the remainder of the fishing year. If despite such closure, landings exceed the ACL, the AA will reduce the commercial ACT (commercial quota) the year following an overage by the amount of the ACL overage of the prior fishing year. These interim measures were extended through May 15, 2013, to allow for the development and implementation of permanent measures through Amendment 37 to the FMP (77 FR 67303, November 9, 2012).

Management Measures Contained in This Temporary Rule

In 2012, the commercial sector for gray triggerfish exceeded the 64,100 lb (28,845 kg) commercial ACL by 9,298 lb (4,218 kg). Therefore, NMFS reduces the 2013 commercial ACT (commercial quota) for gray triggerfish through this temporary rule. The 2013 commercial ACT is set at 51,602 lb (23,406 kg).

Classification

The Regional Administrator, Southeast Region, NMFS, has determined this temporary rule is necessary for the conservation and management of the Gulf gray triggerfish component of the Gulf reef fish fishery and is consistent with the Magnuson-Stevens Act, the FMP, and other applicable laws.

The temporary rule has been determined to be not significant for purposes of Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

An EA was prepared for the interim measures contained in the May 14, 2012, final temporary rule (77 FR 28308). The EA analyzed the impacts of reduced gray triggerfish harvest through the 2012 fishing year, including the impacts related to the interim rule extension (77 FR 28308, November 12, 2012). Copies of the EA are available from NMFS (see **ADDRESSES**).

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive the requirements to provide prior notice and opportunity for public comment on this temporary rule. Such procedures are unnecessary because the AMs (established by Amendment 30A), and the commercial ACT and commercial ACL (implemented by the temporary rule for interim measures), all located at 50 CFR 622.49(a), authorize the AA to file a notification with the Office of the Federal Register to reduce the commercial ACT (commercial quota) the following fishing year if a commercial ACL overage occurs. The final rule for Amendment 30A and the temporary rule for interim measures were already subject to notice and comment. Therefore, all that remains is to notify the public of the reduced 2013 commercial ACT (commercial quota) for Gulf gray triggerfish.

Additionally, prior notice and opportunity for public comment would be contrary to the public interest. Given the ability of the commercial sector to rapidly harvest fishery resources, there is a need to immediately implement the reduced commercial ACT (commercial quota) for the 2013 fishing year. Taking time to provide prior notice and opportunity for public comment creates a higher likelihood of the reduced commercial ACT (commercial quota) and the commercial ACL being exceeded.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

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

Dated: February 28, 2013.

Kara Meckley,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2013–05056 Filed 3–4–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 120813331–3122–02]

RIN 0648–XC164

Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Sector Exemptions; Final Rule Implementing a Targeted Acadian Redfish Fishery for Sector Vessels

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

ACTION: Final rule.

SUMMARY: This action expands on a previously approved sector exemption by allowing groundfish sector trawl vessels to harvest redfish using nets with codend mesh as small as 4.5 inches (11.4 cm). In addition, this action allows sectors to develop an industry-funded at-sea monitoring program for sector trips targeting redfish with trawl nets with mesh sizes that are less than the regulated mesh size requirement. This action is necessary to expand an exemption from current regulations and is intended to allow sector vessels the opportunity to increase redfish harvest and subsequent profitability, above what is already being harvested.

DATES: Effective February 28, 2013, until April 30, 2013.

ADDRESSES: A copy of the accompanying environmental assessment (EA) and supplement and the draft of Component 2 of the REDNET project are available from the NMFS Northeast Regional Office: John K. Bullard, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. These documents are also accessible via the Federal eRulemaking Portal: *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: William Whitmore, Fishery Policy Analyst, phone (978) 281–9182, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

Regulations from Amendment 16 to the Northeast (NE) Multispecies Fishery Management Plan (FMP) allow a groundfish sector to request exemptions from Federal fishing regulations through its annual operations plan. Based on catch data from a collaborative research project, referred to as REDNET, several NE multispecies sectors submitted a regulatory exemption request to fish with 4.5-inch (11.4-cm) codend mesh when targeting Acadian redfish (*Sebastes fasciatus*) in a portion of the Gulf of Maine, east of the year-round Western Gulf of Maine Closure Area. A detailed explanation of the REDNET research project, sector exemption requests to target redfish, and the development of this particular exemption request can be found in the proposed rule for this action (77 FR 66947; November 8, 2012). Those details are not repeated here.

Regulatory exemption requests are normally proposed, reviewed, and approved through the final rule implementing the annual sector operations plans. However, sectors can request exemptions at any time within the fishing year (for a more detailed explanation of the sector exemption request process and current sector exemptions, see 77 FR 8780; February 15, 2012). The New England Fishery Management Council (Council) has requested that we pursue exemptions allowing sector vessels to more efficiently target redfish, and the Council's Research Steering Committee has endorsed the approval of a 4.5-inch (11.4-cm) mesh exemption. Because of this, we proposed a 4.5-inch (11.4-cm)

codend trawl mesh exemption for potential mid-year implementation. All measures that were proposed for this exemption are also extended to the 6-inch (15.2-cm) codend mesh exemption for trips targeting redfish, which is currently approved for fishing year 2012. Table 1 below provides a timeline summarizing the key events for this action.

TABLE 1—TIMELINE OF TARGETED REDFISH FISHERY DEVELOPMENT

December 1, 2011	The Sustainable Harvest Sector and Northeast Fishery Sectors submit an exemption request to use codend mesh as small as 4.5-inches (11.4 cm) to target redfish.
December 21, 2011	NMFS informs the requesting sectors that the exemption request was submitted too late to be considered for approval by May 1, 2012, the start of fishing year 2012.
February 1, 2012	Preliminary findings from Component 2 (of 6) of the REDNET report are presented to the Council.
February 7, 2012	The Council requests NMFS expedite approval of a sector exemption to target redfish.
April 2012	A draft of Component 2 (of 6) of the REDNET report is completed.
May 21, 2012	NMFS requests the Council's Research Steering Committee to review the draft REDNET report.
June 25, 2012	After reviewing the catch data (including discards) presented in the draft REDNET report, the Research Steering Committee recommends that an exemption allowing vessels to use 4.5-inch (11.4-cm) mesh codend to target redfish be approved annually based on catch information from the previous year.
November 8, 2012	NMFS publishes a proposed rule to implement a targeted Acadian redfish fishery.

Approved Measures

1. Exemption From 6.5-Inch (16.5-cm) Codend Mesh Size So Vessels Can Target Redfish

This final rule authorizes a regulatory exemption for the remainder of fishing year 2012 that allows sector vessels to target redfish with codend mesh greater than or equal to 4.5 inches (11.4-cm) but less than 6.5 inches (16.5-cm) (the required minimum codend mesh size for the area fished).

Requirements for Mesh Size Exemption Use

Sectors that intend to use this exemption must notify NMFS and receive amended letters of authorization prior to fishing. To aid in identifying trips targeting redfish with small-mesh nets, sector vessels intending to utilize this exemption are required to submit a trip start hail identifying the trip as one that will target redfish under the exemption. In addition, all sector trawl vessels that intend to target redfish with codend mesh less than 6.5 inches (16.5-cm) are required to have an observer or at-sea monitor on board. Mesh sizes are measured as described at 50 CFR 648.80(f).

Mesh Exemption Performance Monitoring Requirements

To ensure that this exemption does not negatively impact fish stocks, we have established two catch thresholds that, if exceeded by a sector, could result in the NMFS Northeast Regional Administrator rescinding the approval of this exemption for the sector in question. First, to help ensure that vessels do not direct on other species of fish, monthly catch amounts of regulated groundfish (both landings and discards) when trawling small mesh under this exemption must be comprised of at least 80 percent redfish. Second, to help mitigate catches of sub-legal sized groundfish, total groundfish discards (including redfish discards), may not exceed 5 percent of all regulated groundfish caught monthly when trawling with small-mesh nets. These thresholds were determined to be consistent with catch information from REDNET research trips. The initial findings from the REDNET project, including catch data, were presented to the Council and its Research Steering Committee, both which endorsed the report and encouraged NMFS to approve an exemption which would allow redfish to be targeted with smaller mesh. A presentation on the proposed rule, including the thresholds, was also given to the Council's Groundfish Committee on December 19, 2012. Catch data recorded by the observer or at-sea monitor will be used to monitor these thresholds. The Regional Administrator retains the authority to further adjust these two thresholds, if necessary, to help ensure that vessels are directing on redfish and catching minimal amounts of undersized groundfish.

Mesh Exemption Revocation

An interim reporting process is being developed to monitor catch under this exemption. Sector catch utilizing this exemption will be analyzed on a calendar monthly basis with a cumulative calculation throughout the fishing year. For example, if a sector discards 2 lb (0.91 kg) out of 100 lb (45.36 kg) of regulated groundfish caught (catch includes landings and discards) in month one, and 6 lb (2.72 kg) out of 200 lb (90.72 kg) of regulated groundfish in month two, the sector would have cumulatively discarded 8 lb (3.63 kg) out of 300 lb (136.08 kg), or 2.67 percent. If a sector exceeds either the 80 percent redfish threshold or 5 percent discard threshold, it would have 1 month to correct the overage(s) (i.e., the sector must be completely compliant with the thresholds by the end of the ''correcting'' month). If after 1 month the sector has still exceeded either threshold, the exemption for that particular sector could be revoked by the Regional Administrator for the remainder of the fishing year through a notice published in the **Federal Register**. Because of these catch thresholds, a catch monitoring program, and the requirement to submit a trip start hail, sector vessels are no longer required to submit daily catch reports when utilizing either this or the existing 6.0-inch (15.2-cm) codend mesh exemption for redfish. The reporting mechanisms used for submitting catch data may be adjusted at any time if deemed necessary by the Regional Administrator.

In addition, the Regional Administrator reserves the right to revoke this exemption on determining that the exemption is negatively impacting spawning fish, rebuilding efforts for any groundfish stock, or populations of stocks that the current minimum codend mesh size of 6.5 inches (16.5-cm) was intended to protect.

Use of Multiple Mesh Sizes

We specifically requested public comment on whether vessels requesting this exemption should be allowed to fish with both exempted small mesh and regulated codend mesh nets for other groundfish stocks on the same trip citing concern that some requirements could be circumvented. For example, because monitors do not observe every haul (fishing operations may occur while monitors are sleeping), exact catch from these hauls cannot be identified and included in catch thresholds.

This action allows vessels to fish with multiple mesh sizes while fishing on a trip targeting redfish with small mesh. As stated in the proposed rule, if the majority of hauls are not observed, the Regional Administrator could revoke the exemption. Vessels not fishing under an exempted redfish trip remain subject to the minimum mesh size requirements specified in the regulations.

Discard Rate for Exempted and Non-Exempted Trips

All exempted small-mesh redfish trips will be observed and discard estimates on observed hauls will be used to calculate discards of unobserved hauls—a total amount of discards will then be derived for the entire trip. All groundfish catch from a declared small-mesh exempted redfish trip will be debited against the sector's allocation. No catch from small-mesh exempted redfish trips (even catch from mesh greater than 6.5 inches (16.5-cm)) will be factored into a sector's overall discard rate because targeted redfish trips may exhibit different behavior and/or catch rates.

2. Request To Develop Industry-Funded At-Sea Monitoring Programs for Trips Targeting Redfish

As previously outlined, any sector vessel targeting redfish under a mesh size exemption is required to have an observer or at-sea monitor on board. Some sectors are concerned that vessels may lose flexibility if they have to wait to be randomly selected for a federally-funded observer or at-sea monitor through the existing monitoring programs. Several sectors asked to work with us to develop an industry-funded at-sea monitoring program to avoid delays while waiting for random monitoring selection. We have determined that we can support a small-scale industry-funded program. Limitations to the size of the program are due to a limited pool of available observers and at-sea monitors.

Industry-Funded Monitoring Program Plan Approval

Four sectors (26 vessels) have expressed interest in funding additional at-sea monitoring coverage for exempted trips targeting redfish. Any sector interested in developing an industry-funded at-sea monitoring program will be required to develop a monitoring plan as part of its operation plan to be approved by NMFS. If NMFS determines the plan is sufficient, NMFS will approve it along with the rest of the sector's operations plan. For fishing year 2012, any approved monitoring program will be included as an addendum to the sector's operations plan.

Pre-Trip Notification While Using Industry-Funded Monitors

A vessel fishing with an industry-funded at-sea monitor must notify NMFS at least 48 hours in advance of taking an exempted small-mesh trip targeting redfish. Instead of calling into the Pre-Trip Notification System currently established for sector vessels, the vessel will call into a separate system. Call-in information will be provided to the sector vessels utilizing the exemption upon implementation of the program.

Industry-Funded Program Participation

We proposed that all vessels enrolled in a sector with an approved industry-funded program would forfeit the opportunity to have a randomly assigned federally funded observer or at-sea monitor. We also proposed that any vessel in a sector that has an approved industry-funded program and elects to target redfish under the exemption would be required to pay for at-sea monitoring coverage for that redfish trip. However, based on comments received, this final rule allows sectors to propose industry-funded at-sea monitoring programs that apply only to specific vessels within a sector. Vessels that intend to fish with industry-funded at-sea monitors must be identified in the sector's monitoring plan. Identified vessels may not opt-out of the industry-funded program until the following fishing year. While identified vessels may still be selected for random observer or at-sea monitoring coverage when not targeting redfish under this exemption, these vessels may not fish under this exemption with a randomly selected observer or at-sea monitor. All other vessels in the sector may only participate in the exempted small-mesh fishery if their trip is selected for random observer or at-sea monitoring coverage.

Comments and Responses

Ten public comments were received, seven of which are relevant to this action. Comments that were similar were combined and all relevant comments are responded to below. Comments submitted by the Council, Associated Fisheries of Maine, Maine Coast Fishermen's Association, State of Maine, and Northeast Sector Service Network all supported allowing vessels to target redfish with smaller mesh. The Pew Environment Group opposes the exemption. A coordinator for the REDNET project provided a clarification on the proposed rule. Several of the comments addressed more specific issues discussed below.

Comment 1: The Council, Associated Fisheries of Maine, State of Maine, and Northeast Sector Service Network commented that vessels should be provided the flexibility to use multiple meshes on trips targeting redfish with 100-percent observer coverage. They also clarified that vessels should not have mesh of less than 6 inches (15.2 cm) on board if not declared on an exempted redfish trip.

Response: We agree that this option would provide additional flexibility to fishermen. Each trip using the mesh-size exemption to target redfish will have an observer or at-sea monitor onboard the vessel which helps alleviate some concerns raised by opponents of allowing the use of multiple mesh sizes. Because all redfish trips will have an observer or at-sea monitor on board, and the need for additional flexibility, we are allowing vessels to fish multiple mesh sizes on these trips. We also agree that sector vessels cannot have mesh less than the regulated minimum mesh size requirement on board unless fishing under the small-mesh redfish exemption or unless otherwise exempted.

Comment 2: The Council, Associated Fisheries of Maine, State of Maine, and Northeast Sector Service Network suggested that sectors be permitted to allow a subset of their membership to participate in an industry-funded at-sea monitoring program, instead of requiring all members of a sector to participate in that program.

Response: We initially proposed that all sector members would have to participate in an industry-funded at-sea monitoring program submitted by a sector for trips targeting redfish because we felt it would be easier to implement and enforce. However, several comments indicated that not all sector members who wished to target redfish wanted to pay for additional coverage. We understand that the cost of requiring all members of a sector to participate in an industry-funded at-sea monitoring program as proposed for this exemption could prevent a sector from being able to develop and fund their own at-sea monitoring program. Therefore, this final rule allows a subset of sector members to participate in an industry-funded at-sea monitoring program for trips targeting redfish under this exemption instead of requiring all members of a sector to participate in that program, as explained in the preamble of this rule.

Comment 3: Associated Fisheries of Maine and the Northeast Sector Service Network argued that requiring industry to fund all at-sea monitoring coverage

for purposes of utilizing the small mesh redfish exemption is inconsistent with Amendment 16. They cited Amendment 16, which states that ''[t]he industry-funded observer or at-sea monitor program will not replace the NMFS Observer Program. In the event a NMFS observer and a third party observer or at-sea monitor is assigned to the same trip, the NMFS observer will take precedence and the third party observer or at-sea monitor will stand down.''

Response: While the comment is unclear on this point, it appears that the commenters believe that vessels participating in an industry-funded at-sea monitoring program should be able to first call into the Pre-Trip Notification System (PTNS) and have the opportunity to receive a federally-funded NEFOP observer or at-sea monitor. Their position, however, is not supported by the quoted language from Amendment 16, which is taken out of context. As described in Amendment 16, NMFS annually establishes a minimum amount of at-sea monitoring coverage that is necessary for monitoring bycatch by all vessels in the groundfish fishery. Amendment 16 also stated that each sector would develop an at-sea monitoring plan to monitor bycatch across the fishery, and industry would pay for all of that at-sea monitoring by fishing year 2012. It was thus in the context of monitoring bycatch across the groundfish fishery that Amendment 16 explained that in the instance where an industry-funded at-sea monitor and Federal observer were assigned to the same trip, the at-sea monitor would ''stand down.'' The language cited in the comment above was included in Amendment 16 as a way to acknowledge that some trips would be selected for coverage by the NMFS Observer Program and industry would not be responsible for costs associated with those trips.

Furthermore, prohibiting vessels participating in an industry-funded program from calling into the PTNS system and fishing under the exemption with a federally-funded observer or at-sea monitor is necessary to reduce potential bias in data collected by the NMFS observer program. Sectors originally requested that vessels in an industry-funded at-sea monitoring program have the opportunity to receive a federally-funded at-sea monitor or observer prior to having to contract and pay for their own at-sea monitor coverage in order to take advantage of the small-mesh exemption. We had concerns about this approach because we believed that it could bias the federally-funded coverage. Essentially, any time a vessel interested in taking a trip targeting redfish under this exemption was assigned an at-sea monitor or observer, it would be highly likely that they would take a trip under the redfish exemption, thus biasing the nature of the trips on which observer coverage was provided. In the proposed rule, and as now approved in this final rule, we reduced this bias by prohibiting vessels that participate in a voluntary industry-funded at-sea monitoring program from fishing under this exemption on trips where they are randomly assigned a federally-funded observer or at-sea monitor. It should be noted that we are carefully evaluating this bias for sector exemptions that are being requested for fishing year 2013.

Finally, this comment suggests that vessels participating in an industry-funded at-sea monitoring program as approved in this rule have some type of right to request and potentially receive a NMFS observer. On the contrary, this action approves a voluntary sector exemption for vessels that receive random observer or at-sea monitoring coverage and an additional voluntary industry-funded at-sea monitoring program. In either circumstance, the exemption requires accepting several accompanying contingencies (e.g., catch thresholds, monitoring requirements, etc.). If a vessel or sector is unwilling to participate in an industry-funded at-sea monitoring program, then a vessel must wait to be selected for random coverage. Or, if a vessel or sector is unwilling to participate in an industry funded at-sea monitoring program and accept the other contingencies, it can choose not to fish for redfish under the exemption.

Comment 4: Associated Fisheries of Maine and the Northeast Sector Service Network expressed concern that if the redfish exemption trips are monitored only by the industry-funded program, they would never be monitored by the more rigorous Northeast Fishery Observer Program (NEFOP) protocol. While the comment is unclear on this point, it appears that the commenters are concerned that the protocols followed by at-sea monitors will not be sufficient to ensure compliance with the small mesh redfish exemption.

Response: NMFS-certified at-sea monitors record all the catch information necessary to adequately monitor the exemption's measures, as approved. While NEFOP Observers gather additional data not collected by at-sea monitors, much of it is data on gear and fishing practices that are not relevant to monitoring the catch thresholds critical to approving this exemption.

Comment 5: A coordinator for the REDNET project commented that the proposed rule incorrectly stated that the ''final'' report for Component 2 of the REDNET project was available for public review, when in fact it was a ''draft'' report.

Response: This clarification is correct. The report available for public review was a ''draft'' report. The ''final'' REDNET report was submitted to NMFS on January 23, 2013, and is currently under review. However, the catch data (landings and discards) from the REDNET project, which NMFS relied on to approve this exemption, is the same in both the final and draft report. The draft report was subject to the Council's and public's review. Further, there were no changes to the draft version that substantially affect anything in this rule. The final report added analyses on tow information and length/frequency distributions at particular depths. We continue to believe that the results from Component 2 of the REDNET project support the careful development of a targeted redfish fishery.

Comment 6: The Pew Environment Group expressed serious concerns with the exemption as currently proposed. Pew opposes allowing bottom trawl vessels to target redfish with smaller mesh and suggests that smaller fish will be caught with smaller mesh. Pew cited particular concerns with this exemption due to prior stock depletion as well as the slow growth and long life span of redfish. Pew also noted that additional analyses are necessary before they could support a ''directed fishery'' for redfish, the results of which may warrant an environmental impact statement (EIS).

Response: While we understand Pew's concerns with the exemption, we do not agree with their comments for several reasons. First, redfish are not overfished or subject to overfishing—the stock is one of the healthiest groundfish stocks. Most of the redfish allocation has recently gone unharvested; in fishing year 2010, only 31 percent of the allocation was harvested, and only 36 percent was harvested in 2011. The Magnuson-Stevens Act encourages fishing at maximum sustainable levels. It should be noted that redfish growth characteristics, such as growth rates and life spans, are considered when annual allocations are established.

Second, the REDNET research shows that smaller mesh can be used to target redfish without resulting in increased catches of juvenile fish. Importantly, because we recognize that these results are just from one study, we are requiring a bycatch threshold to further prevent increased catches of juvenile redfish and other groundfish while fishing with smaller mesh under this exemption. All trips targeting redfish will be monitored

by an observer or at-sea monitor and will provide additional beneficial data to increase our understanding of the fishery and allow us to closely monitor this exemption.

Third, measures in this action have been adequately analyzed in several environmental assessments. The environmental assessment for Framework Adjustment 47 analyzed allocations based on stock assessments that use the best available science, are subject to peer review, and include consideration of the growth rates and lifespan of redfish and other groundfish species. Importantly, this action only allows sector vessels an increased opportunity to harvest more of their allocation, which has previously been underharvested. The environmental impacts of sectors receiving an allocation and fishing under regulatory exemptions for fishing year 2012 are further analyzed in the Environmental Assessment for Fishing Year 2012 Sector Operations Plans and Contracts, which also tiers off the assessment for Framework Adjustment 47.

The environmental impacts specific to this action are analyzed in a Supplemental Environmental Assessment for Fishing Year 2012 Sector Operations Plans and Contracts. This assessment included a review of the REDNET study, which showed no increased catch of juvenile fish when fishing for redfish with 4.5 inch mesh nets. Because the REDNET information shows no increased catch of juvenile fish, and there were no significant impacts found in the EAs and specifications that considered the impacts of fishing for the total allocation, an EIS is unnecessary. Last, this action includes increased monitoring, catch thresholds, and we have stated that we will revoke the exemption if it is determined that fishing for redfish with smaller mesh is negatively impacting redfish or other groundfish stocks.

Changes From the Proposed Rule

We had proposed that all vessels in a sector be required to fund their own at-sea monitoring coverage for trips targeting redfish under this exemption if the sector elected to develop an industry-funded at-sea monitoring plan. The final rule changes this requirement so that a subset of sector members may participate in an industry-funded at-sea monitoring plan that is subject to approval by NMFS.

The November 8, 2012, proposed rule stated that ''* * * to help mitigate catches of sub-legal sized groundfish, total groundfish discards (excluding redfish discards) may not exceed 5 percent of all groundfish caught when directing on redfish with small-mesh nets.'' This requirement was incorrectly stated in the proposed rule. Catch from the REDNET research project demonstrated that vessels discarded less than 5 percent of all groundfish caught (including redfish). A clarification was published in the **Federal Register** on January 10, 2012 (78 FR 2249), with an additional 15-day period to comment on this clarification. No comments on this clarification were received. Redfish discards will be included in the discard threshold as intended and as stated in the EA completed for this action. Not incorporating discards of juvenile redfish could jeopardize the health of the stock.

Classification

The Administrator, Northeast Region, NMFS, has determined that this rule is consistent with the NE Multispecies FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

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

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chief Council for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a 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: February 27, 2013.

Alan D. Risenhoover,

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

[FR Doc. 2013–05044 Filed 2–28–13; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 121128658–3161–02]

RIN 0648–BC72

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Framework Adjustment 7

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

ACTION: Final rule.

SUMMARY: NMFS is changing the butterfish mortality cap on the longfin squid fishery from a catch cap to a discard cap as a result of its approval of Framework Adjustment 7 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan. This action also reduces the butterfish mortality cap for the 2013 fishing year by 13 percent (from 4,477 mt to 3,884 mt) to exclude butterfish landings that were previously included in the butterfish mortality cap allocation. The adjustment will maintain the intended function of the butterfish mortality cap by continuing to limit butterfish discards in the longfin squid fishery while accommodating a potential directed butterfish fishery during the 2013 fishing year.

DATES: Effective March 5, 2013 through December 31, 2013.

ADDRESSES: Copies of supporting documents used by the Mid-Atlantic Fishery Management Council (Council), including the Framework Document for Framework Adjustment 7, are available from: Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 N. State Street, Dover, DE 19901. The Framework Document is also accessible via the Internet at *http://www.nero.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Katherine Richardson, Policy Analyst, 978–675–2152, fax 978–281–9135.

SUPPLEMENTARY INFORMATION:

Background

NMFS published a proposed rule for Framework Adjustment 7 on December 13, 2012 (77 FR 74159). The proposed rule included additional background information and detail on why and how the Council developed Framework Adjustment 7, which NMFS has not repeated in this rule.

NFMS implemented the butterfish mortality cap on the longfin squid fishery as part of Amendment 10 to the Atlantic Mackerel, Squid, and Butterfish (MSB) Fishery Management Plan (FMP) (75 FR 11441, March 11, 2010) as a means of reducing fishing mortality to the butterfish stock. Butterfish discards in the longfin squid fishery account for the largest source of butterfish fishing mortality. The cap currently limits butterfish catch (both landings and discards) on directed longfin squid trips. The mortality cap accounts for fishery behavior in which fishermen discard most butterfish caught on a longfin squid trip and land only a small amount of butterfish, which has been the case since 2002. In response to new information that suggests increased butterfish abundance, the Council recommended and NMFS implemented on January 16, 2013, (78 FR 3346) a much higher butterfish quota for the 2013 fishing year. The increased quota will allow for a directed butterfish fishery for the first time in recent years.

NMFS currently calculates the butterfish mortality cap by extrapolating the observed butterfish catch (landings and discards) on longfin squid trips with an observer aboard to determine the butterfish catch on all unobserved longfin squid trips. The butterfish mortality cap calculations currently include all trips that land greater than or equal to 2,501 lb of longfin squid. With directed butterfish fishing, an observed trip could land a very large amount of butterfish and just enough longfin squid to qualify as a longfin squid trip, and we would include it as a butterfish mortality cap trip. This means that the cap estimation would include a number of trips that are not truly targeting longfin squid. In order to accommodate the directed butterfish fishery, Framework Adjustment 7 changes the butterfish mortality cap on the longfin squid fishery from a catch cap to a discard cap. If the Council specifies a butterfish quota that does not accommodate a directed fishery in future fishing years, it can change the butterfish discard cap to a catch cap as part of the specifications process.

This action also reduces the butterfish mortality cap for the 2013 fishing year by 13 percent (from 4,477 mt to 3,884 mt) to exclude butterfish landings that were previously included in the butterfish mortality cap allocation. NMFS has based this reduction on year-end butterfish mortality cap analyses for the 2011 fishing year, in which 13 percent of butterfish catch in the cap was retained, and 87 percent of butterfish catch in the cap was discarded. Although the total butterfish mortality allocation will decrease, NMFS expects the adjusted cap level to maintain overall butterfish mortality in the longfin squid fishery.

Changes From the Proposed Rule

At the time the proposed rule for Framework 7 published, NMFS had not yet finalized the butterfish mortality cap allocation for 2013. Final Research Set-Aside (RSA) allocations for a given year are typically not available until final specifications, and the exclusion of the final RSA allocation results in slight decreases in a number of the specified allocations for a given species. We have since finalized in the 2013 MSB Specifications and adjusted the butterfish mortality allocation from 4,500 mt to 4,477 mt to account for allocated butterfish RSA.

The proposed rule included the 13-percent reduction to the mortality cap using the cap specified prior to final RSA allocation. For this final rule, we are adjusting the reduction of the mortality cap to include the RSA allocation. Thus, the final rule for Framework 7 applies the 13-percent discount to the butterfish mortality cap allocation presented in the final 2013 MSB Specifications (4,477 mt), which results in a 2013 butterfish mortality cap of 3,884 mt.

Comments and Responses

NMFS received one comment on the proposed rule for Framework Adjustment 7. The Garden State Seafood Association (GSSA), a New Jersey-based commercial fishing industry group, commented in support for the action and noted that it was consistent with the intent of Amendment 10 to limit butterfish discards and maintain the butterfish cap within the longfin fishery, while facilitating the directed butterfish fishery in 2013.

Response: NMFS agrees that the measures in Framework 7 will still limit butterfish discards in the longfin squid fishery. The measures implemented in the 2013 MSB Specifications facilitate the directed butterfish fishery, but this measure does allow additional landings of butterfish while on a directed longfin squid trip.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the Atlantic Mackerel, Squid, and Butterfish FMP, other provision of the Magnuson-Stevens Act, and other applicable law.

The Assistant Administrator for Fisheries finds that the need to implement these measures in a timely manner to avoid premature closure of the longfin squid fishery constitutes good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date. The 2013 MSB Specifications allocated a level of butterfish catch that may create enough butterfish market interest to cause a directed butterfish fishery for the first time in many years. This directed fishery is expected to be of the greatest value in late winter. If directed butterfish fishing increases without the measures included in this action, vessels that catch a high volume of butterfish on trips we determine to be longfin squid trips (*i.e.,* those trips that also land more than 2,500 lb of longfin squid), will cause the butterfish mortality cap in the longfin squid fishery to be quickly harvested, resulting in a premature closure of the longfin squid fishery. Because the measures in this action remove landed butterfish from the calculation of the longfin squid butterfish mortality cap, these measures would prevent such an early closure of the longfin squid fishery. A premature closure of the longfin squid fishery would be contrary to the public interest because it would cause unnecessary and unjustifiable economic harm to fishery participants.

Failure to implement this rule immediately will undermine NMFS' ability to accurately manage the butterfish resource by correctly estimating discards. This action has no other impacts on the fishing industry or other members of the public, and thus, the potential for closing the fishery during the normal 30-day delay in effectiveness would be contrary to public interest. Therefore, we are waiving the delay in effectiveness so that the final rule may be effective upon publication. Under MSA and other applicable law requirements, we have proceeded expeditiously with this action and factors out of our control resulted in the delay beyond the implementation of the 2013 MSB Specifications.

This rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. NMFS published the factual basis for this certification in the proposed rule and has not repeated it here. NMFS received no comments regarding this certification. As a result, NMFS was not required to prepare a

final regulatory flexibility analysis, and none has been prepared.

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

Dated: February 27, 2013

Alan D. Risenhoover,

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

[FR Doc. 2013–05068 Filed 3–4–13; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 78, No. 43
Tuesday, March 5, 2013

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 850

RIN 3206–AM45

Electronic Retirement Processing

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: Pursuant to the President's January 18, 2011, Executive Order 13563—*Improving Regulation and Regulatory Review,* published in the **Federal Register**, the Office of Personnel Management (OPM) undertook a review of our regulations, to streamline and revise this part so that it better serves OPM's ongoing modernization of the processing of benefits under the Civil Service Retirement System (CSRS), the Federal Employees' Retirement System (FERS), the Federal Employees' Group Life Insurance (FEGLI), the Federal Employees Health Benefits (FEHB), and the Retired Federal Employee Health Benefits (RFEHB) Programs. OPM proposes these amendments to ensure the rule reflects the electronic recordkeeping and automated retirement processing improvements being deployed by OPM, agencies, and Shared Service Centers under OPM's Human Resources Line of Business. These amendments are also being proposed to provide OPM with the flexibility to implement further improvements in automated retirement processing, recordkeeping, and electronic submission of forms and retirement applications as OPM's technological initiatives reach completion.

DATES: We must receive your comments by May 6, 2013.

ADDRESSES: You may submit comments, identified by docket number and/or RIN number 3206–AM54, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: combox@opm.gov.* Include RIN number 3206–AM45 in the subject line of the message.
- *Mail:* John Panagakos, Retirement Policy, Retirement Services, Office of Personnel Management, 1900 E. Street NW., Washington, DC 20415–3200.

FOR FURTHER INFORMATION CONTACT: Roxann Johnson or Kristine Prentice, (202) 606–0299.

SUPPLEMENTARY INFORMATION: OPM proposes to amend part 850 of title 5, Code of Federal Regulations, by updating the regulations previously published at 72 FR 73573 (December 28, 2007). OPM is proceeding with its efforts to modernize its retirement processing systems and, therefore, is proposing these changes so that part 850 better reflects the automated systems OPM has developed and to afford flexibility in developing and adopting automated technologies that improve the quality and timeliness of retirement, health, and life insurance benefits processing.

To assist in meeting the ongoing objective to modernize the processing of employee and retirement benefits, we have removed references to OPM's ''Retirement Systems Modernization'' (RSM) initiative so that part 850 reflects OPM's current efforts in modernizing these systems. For that reason, OPM proposes renaming part 850 ''Electronic Retirement Processing.'' This proposed rule would also amend §§ 850.101 and 850.102 by removing specific references to RSM and the electronic retirement and insurance processing system so that these subsections better reflect OPM's current modernization efforts and objectives. The proposed rule adds language in § 850.101(a) to clarify that automated technologies implemented to improve the quality and timeliness of retirement, health, and life insurance benefits processing must be accessible to people with disabilities as required by section 508 of the Rehabilitation Act, 29 U.S.C. 794(d).

The proposed rule would add definitions within § 850.103 that describe specific databases, electronic records, and processes OPM has developed, utilized, or is in the process of implementing since part 850 was first issued in 2007. Specifically, we have included definitions of OPM's Electronic Document Management System, the Electronic Official Personnel Record Folder, the Electronic Individual Retirement Record, the Electronic Retirement Record, and the Retirement Data Repository.

The proposed rule also revises language at § 850.106(a)(4) to clarify that when there are regulatory requirements under CSRS, FERS, FEGLI, FEHB or RFEHB that require a signature be notarized, the notarization requirement may be satisfied if the notary public or other official's signature is attached to, or logically associated with, all records necessary to meet the prescribed regulations. Additionally, we have added language in the proposed rule to clarify that a person making an electronic signature must be in the physical presence of a notary or other official. However, the proposed rule would allow the Director to issue directives allowing for virtual presence if the procedures used by the notary or official (such as audio-video conferencing) have safeguards equivalent to the physical presence of the person signing.

We also propose removing the references to notice requirements under §§ 850.201(c) and 850.203(b). These requirements were included in part 850 to accommodate specific processes designed for the previous RSM effort. However, upon review, OPM has determined that under future retirement processes, OPM's standard informational material provided to annuitants and OPM's annual notices, which include information to annuitants regarding their post-retirement survivor election rights and annuity Cost-of-Living Adjustments, provide sufficient information to annuitants to satisfy the purpose of the notice requirements under §§ 850.201(c) and 850.203(b).

The proposed rule would also add specific references at § 850.301 to the Electronic Individual Retirement Record. These electronic record equivalents for the hardcopy based Individual Retirement Record (SF 2806 or SF 3100) are, or will be, provided to OPM by agencies and Shared Service Centers through the electronic data feeds for storage in OPM's Retirement Data Repository databases. Section 850.301 would also be amended to add a reference to OPM's Electronic Document Management System, which is a database of electronic images of hardcopy documents imaged and stored during OPM's RSM initiative.

Additionally, we propose removing subsection (c) from section 850.301, which requires OPM to retain documents in accordance with requirements under title 44, United States Code, after they have been imaged or converted to electronic records. Because title 44, United States Code, provides the requirements federal agencies must follow in retaining documents after they have been converted to electronic records, the additional requirements noted under § 850.301(c) regarding retention are unnecessary.

Finally, OPM has received many requests from agencies to allow them the ability to submit electronically notices of law enforcement officer, firefighter, or nuclear materials retirement coverage required by §§ 831.811(a), 831.911(a), 842.808(a), or 842.910(a). To accommodate these requests, we have included instructions under § 850.401 on how to submit these notices electronically and propose amending this section to require agencies and other entities to use this method when submitting future notices.

Executive Order 13563 and Executive Order 12866

The Office of Management and Budget has reviewed this rule in accordance with E.O. 13563 and E.O. 12866.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the purpose of this regulation is to assist in facilitating OPM's ongoing modernization of the processing of benefits under CSRS, FERS, FEGLI, FEHB, and RFEHB.

List of Subjects in 5 CFR Parts 850

Administrative practice and procedure, Air traffic controllers, Alimony, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Reporting and recordkeeping requirements, Retirement.

Office of Personnel Management.

John Berry,

Director.

For the reasons discussed in the preamble, the Office of Personnel Management is proposing to amend 5 CFR parts 850 as follows:

PART 850—RETIREMENT SYSTEMS MODERNIZATION

■ 1. The authority citation for part 850 continues to read as follows:

Authority: 5 U.S.C. 8347; 5 U.S.C. 8461; 5 U.S.C. 8716; 5 U.S.C. 8913; sec. 9 of Pub. L. 86–724, 74 Stat. 849, 851–52 (September 8, 1960) as amended by sec. 102 of Reorganization Plan No. 2 of 1978, 92 Stat. 3781, 3783 (February 23, 1978).

■ 2. The heading for part 850 is revised as above to read as follows:

■ 3. Revise § 850.101 to read as follows:

§ 850.101 Purpose and scope.

(a) The purpose of this part is to enable changes to OPM's retirement and insurance processing systems to improve the quality and timeliness of services to employees and annuitants covered by CSRS and FERS by using contemporary, automated business processes and supporting accessible technologies. By utilizing these automated processes, OPM will employ more efficient and effective business systems to respond to increased customer demand for higher levels of customer service and online self-service tools.

(b) The provisions of this part authorize exceptions from regulatory provisions that would otherwise apply to CSRS and FERS annuities and FEGLI, FEHB, and RFEHB benefits processed by or at the direction of OPM. Those regulatory provisions that would otherwise apply were established for a hardcopy based retirement and insurance benefits processing system that may eventually be phased out but which will continue to operate concurrently with OPM's modernization efforts. During the phased transition to electronic retirement and insurance processing, certain regulations that were not designed with information technology needs in mind, and which are incompatible with electronic business processes, must be set aside with respect to electronic retirement and insurance processing. The regulations set forth in this part make the transition to electronic processing possible.

(c) The provisions of this part do not affect retirement and insurance eligibility and annuity computation provisions. The provisions for capturing retirement and insurance data in an electronic format, however, may support, in some instances, more precise calculations of annuity and insurance benefits than were possible using hardcopy records.

■ 4. Revise § 850.103 to read as follows:

§ 850.103 Definitions.

In this part—

Agency means an Executive agency as defined in section 105 of title 5, United States Code; a legislative branch agency; a judicial branch agency; the U.S. Postal Service; the Postal Regulatory Commission; and the District of Columbia government.

Biometrics means the technology that converts a unique characteristic of an individual into a digital form, which is then interpreted by a computer and compared with a digital exemplar copy of the characteristic stored in the computer. Among the unique characteristics of an individual that can be converted into a digital form are voice patterns, fingerprints, and the blood vessel patterns present on the retina of one or both eyes.

Cryptographic control method means an approach to authenticating identity or the authenticity of an electronic document through the use of a cipher (i.e., a pair of algorithms) which performs encryption and decryption.

CSRS means the Civil Service Retirement System established under subchapter III of chapter 83 of title 5, United States Code.

Digital signature means an electronic signature generated by means of an algorithm that ensures that the identity of the signatory and the integrity of the data can be verified. A value, referred to as the ''private key,'' is generated to produce the signature and another value, known as the ''public key,'' which is linked to but is not the same as the private key, is used to verify the signature.

Digitized signature means a graphical image of a handwritten signature usually created using a special computer input device (such as a digital pen and pad), which contains unique biometric data associated with the creation of each stroke of the signature (such as duration of stroke or pen pressure). A digitized signature can be verified by a comparison with the characteristics and biometric data of a known or exemplar signature image.

Director means the Director of the Office of Personnel Management.

Electronic communication means any information conveyed through electronic means and includes electronic forms, applications, elections, and requests submitted by email or any other electronic message.

Electronic Document Management System (EDMS) means the electronic system of images of hardcopy individual retirement records (SF 2806 and SF 3100) and other retirement-related documents.

Electronic Official Personnel Record Folder (eOPF) means an electronic version of the hardcopy Official Personnel Folder (OPF), providing Web-enabled access for federal employees and HR staff to view eOPF documents.

Electronic Individual Retirement Record (eIRR) means a web-based database that contains certified electronic closeout and fully paid post-56 military service deposit Individual Retirement Records (IRRs), also known as Standard Form (SF) 2806 and SF 3100. The eIRR is stored in the Electronic Individual Retirement Record records storage database (formerly known as the Individual Retirement Record Closeout Data Capture or ICDC records storage database).

Employee means an individual, other than a Member of Congress, who is covered by CSRS or FERS.

Enterprise Human Resources Integration (EHRI) Data System means the comprehensive electronic retirement record-keeping system that supports OPM's retirement processing across the Federal Government.

Electronic Retirement Record (ERR) means the certified electronic retirement record submitted to OPM as a retirement data feed in accordance with the Guide to Retirement Data Reporting. The ERR is submitted to OPM whenever an Agency would otherwise submit a hardcopy IRR to OPM.

FEGLI means the Federal Employees' Group Life Insurance Program established under chapter 87 of title 5, United States Code.

FEHB means the Federal Employees Health Benefits Program established under chapter 89 of title 5, United States Code.

FERS means the Federal Employees' Retirement System established under chapter 84 of title 5, United States Code.

Member means a Member of Congress as defined by section 2106 of title 5, United States Code, who is covered by CSRS or FERS.

Non-cryptographic method is an approach to authenticating identity that relies solely on an identification and authentication mechanism that must be linked to a specific software platform for each application.

Personal identification number (PIN) or password means a non-cryptographic method of authenticating the identity of a user of an electronic application, involving the use of an identifier known only to the user and to the electronic system, which checks the identifier against data in a database to authenticate the user's identity.

Public/private key (asymmetric) cryptography is a method of creating a unique mark, known as a digital signature, on an electronic document or file. This method involves the use of two computer-generated, mathematically-linked keys: A private signing key that is kept private and a public validation key that is available to the public.

Retirement Data Repository means a secure centralized data warehouse that stores electronic retirement data of employees covered under the Civil Service Retirement System or the Federal Employees Retirement System compiled from multiple sources including agencies and Shared Service Centers.

RFEHB means the Retired Federal Employees Health Benefits Program established under Public Law 86–724, 74 Stat. 849, 851–52 (September 8, 1960), as amended.

Shared Service Centers means processing centers delivering a broad array of administrative services to multiple agencies.

Shared symmetric key cryptography means a method of authentication in which a single key is used to sign and verify an electronic document. The single key (also known as a ''private key'') is known only by the user and the recipient or recipients of the electronic document.

Smart card means a plastic card, typically the size of a credit card, containing an embedded integrated circuit or ''chip'' that can generate, store, or process data. A smart card can be used to facilitate various authentication technologies that may be embedded on the same card.

■ 5. Amend § 850.106 by revising paragraph (a)(4) to read as follows:

§ 850.106 Electronic signatures.

(a) * * *

(4)(i) In general, any regulatory requirement under CSRS, FERS, FEGLI, FEHB or RFEHB that a signature be notarized, certified, or otherwise witnessed, by a notary public or other official authorized to administer oaths may be satisfied by the electronic signature of the person authorized to perform those acts when such electronic signature is attached to or logically associated with all other information and records required to be included by the applicable regulation.

(ii) Except as provided in paragraph (iii), a person signing a consent or election for the purpose of electronic notarization under paragraph (i) must be in the physical presence of the notary public or an official authorized to administer oaths.

(iii) The Director may provide in directives issued under § 850.104 that alternative procedures utilized by a notary public or other official authorized to administer oaths (such as audio-video conference technology) will be deemed to satisfy the physical presence requirement for a notarized, certified, or witnessed election or consent, but only if those procedures with respect to the electronic system provide the same safeguards as are provided by physical presence.

* * * * *

■ 6. Revise § 850.201 to read as follows:

§ 850.201 Applications for benefits.

(a) Hardcopy applications and related submissions that are otherwise required to be made to an individual's employing agency (other than by statute) may instead be submitted electronically in such form as the Director prescribes under § 850.104.

(b) Data provided under subpart C of this part are the basis for adjudicating claims for CSRS and FERS retirement benefits, and will support the administration of FEGLI, FEHB and RFEHB coverage for annuitants, under this part.

§ 850.202 [Amended]

■ 7. Amend § 850.202 by removing paragraphs (b)(1) and (b)(2).

■ 8. Revise § 850.203 to read as follows:

§ 850.203 Other elections.

Any other election may be effected in such form as the Director prescribes under § 850.104. Such elections include but are not limited to elections of coverage under CSRS, FERS, FEGLI, FEHB, or RFEHB by individuals entitled to elect such coverage; applications for service credit and applications to make deposit; and elections regarding the withholding of State income tax from annuity payments.

■ 9. Revise § 850.301 to read as follows:

§ 850.301 Electronic records; other acceptable records.

(a) Acceptable electronic records for retirement and insurance processing by OPM include—

(1) Electronic employee data, including an eIRR or an ERR, submitted by an agency, agency payroll office, or Shared Service Center, or other entity and stored within the EHRI Retirement Data Repository, the eIRR records storage database, or other OPM database.

(2) Electronic Official Personnel Folder (eOPF) data; and

(3) Documents, including hardcopy versions of the Individual Retirement Record (SF 2806 or SF 3100), or data or images obtained from such documents, including images stored in EDMS, that are converted to an electronic or digital form by means of image scanning or other forms of electronic or digital conversion.

(b) Documents that are not converted to an electronic or digital form will

continue to be acceptable records for processing by the retirement and insurance processing system.

■ 10. Revise § 850.401 to read as follows:

§ 850.401 Electronic notice of coverage determination.

An agency or other entity that submits electronic employee records directly or through a Shared Service Center must include in the notice of law enforcement officer, firefighter, or nuclear materials retirement coverage, required by §§ 831.811(a), 831.911(a), 842.808(a), or 842.910(a) of this chapter, the position description number, or other unique alphanumeric identifier, in the notice for the position for which law enforcement officer, firefighter, or nuclear materials courier retirement coverage has been approved. Agencies or other entities must submit position descriptions to OPM in a PDF document to combox address: *combox@opm.gov.*

[FR Doc. 2013–04965 Filed 3–4–13; 8:45 am]

BILLING CODE 6325–38–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Doc. No. AMS–FV–12–0052; FV12–905–2 PR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Revising Reporting Requirements and New Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on a proposed change to reporting requirements prescribed under the Federal marketing order for oranges, grapefruit, tangerines, and tangelos grown in Florida (order). The Citrus Administrative Committee (Committee) is responsible for local administration of the order. This action would require all fresh citrus handlers to provide the Committee with a list of all growers whose fruit they handled each season. This information would enable the Committee to more efficiently administer the order and improve communication with growers. This proposal also announces the Agricultural Marketing Service's (AMS) intention to request approval from Office of Management and Budget (OMB) of a new information collection.

DATES: Comments on the proposed rulemaking must be received by May 6, 2013. Pursuant to the Paperwork Reduction Act, comments on the information collection burden must be received by May 6, 2013.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *http://www.regulations.gov.* All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov.* All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Jennie M. Varela, Marketing Specialist, or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (863) 324–3375, Fax: (863) 325–8793, or Email: *Jennie.Varela@ams.usda.gov* or *Christian.Nissen@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Laurel May, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Laurel.May@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Order No. 905, as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposed rule would revise the reporting requirements prescribed under the order. This action would require all fresh citrus handlers to provide the Committee with a list of all growers whose fruit they handled each season. This information would enable the Committee to more efficiently administer the order and better communicate fresh market issues to fresh market citrus growers. This proposed change was unanimously recommended by the Committee at a July 17, 2012, meeting.

Section 905.71 of the order provides the Committee, with the approval of the Secretary, authority to collect information from handlers that is deemed necessary for administering the order. This proposed rule would utilize this authority to establish a new § 905.171 under the rules and regulations of the order. This new section would require handlers of fresh citrus to report to the Committee a list of names and contact information for all growers whose fruit they have shipped by June 15 of each season.

Currently, the Committee does not require handlers to report any information regarding the growers who supply them. In order to communicate with its grower base regarding the order or Committee actions, the Committee depends on mailing lists from other industry groups. However, third-party lists are often incomplete, out of date, or do not distinguish between those growing for the fresh market or those growing for the processed market.

Ninety percent of the volume of citrus produced in Florida is sold for processing into juice, which is not regulated under the order. Consequently, while there are an estimated 8,000 citrus growers, it is estimated only 750 growers produce for

the fresh market. Because there is no readily available comprehensive list of fresh citrus growers, the Committee could allocate a great deal of resources into information distribution and still not be certain that the information is getting to those covered under the order.

Recently, the Committee began discussing potential changes to the order to make it more efficient and responsive to industry needs. In these discussions, the Committee recognized that grower involvement could be improved through focused communication with fresh market citrus growers. However, in order to actively reach out to growers in the industry, the Committee must have accurate information. The Committee discussed developing a list of growers compiled annually from information provided by handlers to make effective outreach possible. Some members expressed concerns about the disclosure of proprietary information. The Committee addressed these concerns by stating the scope of the information collection could be limited to only grower contact information.

In addition, while this action would assist the Committee in its efforts to keep growers informed and to solicit their input on potential changes to the order, it also could be used to increase grower outreach and involvement in Committee elections and membership, facilitate grower participation in amendment and continuance referenda, and provide for a more efficient use of Committee resources.

As a result, Committee members recommended collecting grower names and contact information each season from handlers of fresh citrus so that the Committee would have an accurate and updated list to use in communicating with fresh market citrus growers. June 15 was selected as the due date for this information as it is toward the end of the season, and Committee members agreed handlers would have a complete list at that time.

This change would revise reporting requirements to require all fresh citrus handlers regulated under the order to provide the Committee with contact information for all growers whose fruit they have shipped. This information would be due by June 15 of each season. The change would enable the Committee to more efficiently administer the order and communicate fresh market issues to fresh market citrus growers.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 8,000 growers of citrus in the production area and approximately 45 handlers subject to regulation under the marketing order; however, it is estimated that only 750 growers produce for the fresh market. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $7,000,000 (13 CFR 121.201).

Based on production data, grower prices as reported by the National Agricultural Statistics Service, and the total number of Florida citrus growers, the average annual grower revenue is below $750,000. In addition, based on industry and Committee data, the average annual f.o.b. price for fresh Florida citrus during the 2010–11 season was approximately $12.16 per 4/5 bushel carton, and total fresh shipments were approximately 30.4 million cartons. Using the average f.o.b. price and shipment data, about 55 percent of the Florida citrus handlers could be considered small businesses under SBA's definition. Thus, assuming a normal distribution, the majority of producers and handlers of Florida citrus may be classified as small entities.

This proposed rule would revise the reporting requirements prescribed under the order. This action would require all fresh citrus handlers to provide the Committee with a list of all growers whose fruit they handled by June 15 of each season. This information would enable the Committee to more efficiently administer the order and better communicate fresh market issues to fresh market citrus growers. This rule would create a new § 905.171, which would establish the new reporting requirement. The authority for this action is provided for in § 905.71 of the order. This proposed change was unanimously recommended by the Committee at a July 17, 2012, meeting.

Requiring grower contact information each season would impose a minor increase in the reporting burden on all citrus handlers. However, this data is already recorded and maintained by handlers as a part of their daily business. Handlers, regardless of size, should be able to readily access this information. Consequently, any additional costs associated with this change would be minimal and apply equally to all handlers.

This action should also help growers receive more information about the activities under the order and make them more aware of their opportunities to participate in the efforts of the Committee. The benefits of this rule are expected to be equally available to all fresh citrus growers, regardless of their size.

The Committee discussed making no change as an alternative to this action but determined that in order to efficiently carry out the objectives of the marketing order, the information collection within this new report was necessary. Therefore, this alternative was rejected.

This proposal would establish one new reporting requirement and would require one new Committee form. Therefore, this proposed rule would impose a minor increase in the reporting burden for all handlers, which is discussed in the Paperwork Reduction Act section of this document.

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

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Further, the Committee's meeting was widely publicized throughout the citrus industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the July 17, 2012, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *www.ams.usda.gov/*

MarketingOrdersSmallBusinessGuide. Any questions about the compliance guide should be sent to Laurel May at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 60-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), this notice announces AMS's intent to request approval from the Office of Management and Budget (OMB) for a new information collection under OMB No. 0581–NEW. It will be merged with the forms currently approved under OMB No. 0581–0189 ''Generic Fruit Crops.''

Title: Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Marketing Order No. 905.

OMB Number: 0581–NEW.

Type of Request: New Collection.

Abstract: The information requirements in this request are essential to carry out the intent of the Act, to provide the respondents the type of service they request, and to administer the Florida citrus marketing order program.

On July 17, 2012, the Committee unanimously recommended that all fresh citrus handlers, covered under the order, provide the Committee with a list of all growers whose fruit they handled each season. This form, titled Handler Supplier Report, would be submitted directly to the Committee by handlers by June 15 of each year.

This information collection would benefit the facilitation of communication between the Committee and the growers. The information collected would only be used by authorized representatives of the USDA, including the AMS Fruit and Vegetable Program regional and headquarters staff, and authorized employees of the Committee. Authorized Committee employees would be the primary users of the information, and the AMS would be the secondary users. The Committee's staff would compile the information and utilize it to distribute regulatory information, to seek grower nominations for Committee positions, to keep fresh growers informed of issues affecting the fresh segment of the industry, and to prepare both the annual report and marketing policy, as required under the order. All proprietary information would be kept confidential in accordance with the Act and the order.

The proposed request for new information collection under the order is as follows:

Handler Supplier Report

Estimate of Burden: Public reporting burden for this collection of information is estimated to be an average of 0.33 hours per response.

Respondents: Handlers of fresh Florida citrus

Estimated Number of Respondents: 45

Estimated Number of Responses per Respondent: 1

Estimated Total Annual Burden on Respondents: 14.85 hours

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581–NEW and the Marketing Order for Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida, and should be sent to the USDA in care of the Docket Clerk at the previously-mentioned address or at *http://www.regulations.gov.*

All responses to this notice will be summarized and included in the request for OMB approval. All comments received will become a matter of public record and will be available for public inspection during regular business hours at the address of the Docket Clerk or at *http://www.regulations.gov.*

If this proposed rule is finalized, this information collection will be merged with the forms currently approved under OMB No. 0581–0189 ''Generic Fruit Crops.''

Citrus, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 905 is proposed to be amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

■ 1. The authority citation for 7 CFR part 905 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 905.171 is added to read as follows:

§ 905.171 Handler Supplier Report.

Each handler shall furnish a supplier report to the Committee on an annual basis. Such reports shall be made on forms provided by the Committee and shall include the name and business address of each grower whose fruit was shipped or acquired by the handler during the season. Handlers shall submit this report to the Committee not later than June 15 of each season.

Dated: February 27, 2013.

Rex A. Barnes,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2013–04964 Filed 3–4–13; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF COMMERCE

Minority Business Development Agency

15 CFR Part 1400

[Docket No. 121130667–2667–02]

Determination of Group Eligibility for MBDA Assistance

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Response to petition.

SUMMARY: On January 11, 2012, the Minority Business Development Agency (MBDA) received a petition from the American-Arab Anti-Discrimination Committee (ADC or Petitioner) requesting designation of the Arab-American community as a socially or economically disadvantaged group whose members are eligible for MBDA assistance. This document announces MBDA's determination that the ADC Petition is not currently supported by sufficient evidence to establish social or economic disadvantage as required by the MBDA regulations and applicable legal precedent.

FOR FURTHER INFORMATION CONTACT: Kimberly Marcus, Associate Director for Legislation, Education, and Intergovernmental Affairs, Minority Business Development Agency, 1401 Constitution Ave., Room 5065, Washington, DC 20230, (202) 482–6272.

SUPPLEMENTARY INFORMATION: Pursuant to Executive Order 11625 (E.O. 11625), MBDA provides management and technical assistance to minority business enterprises (MBEs) through its services and programs. A minority business enterprise for purposes of E.O. 11625 is defined as a business owned or controlled by one or more socially or economically disadvantaged individuals.[1]

E. O. 11625 and subsequent MBDA regulations have designated the following groups whose members are currently considered socially or economically disadvantaged and therefore eligible to receive MBDA assistance: [2] Blacks, Puerto-Ricans, Spanish-speaking Americans, American Indians, Eskimos and Aleuts, Hasidic Jews, Asian Pacific Americans, and Asian Indians.[3] In order for a group to become eligible for MBDA's services, the group must submit a petition to MBDA demonstrating, by a preponderance of the evidence, that the group is socially or economically disadvantaged.[4]

On May 30, 2012, MBDA published a notice of proposed rulemaking and a request for comments in the **Federal Register** announcing receipt of a petition from the ADC seeking designation of Arab-Americans as a socially or economically disadvantaged group and requesting public comment on this designation.[5] In particular, the notice requested comment on and evidence concerning the extent to which Arab-Americans are economically disadvantaged. Comments were accepted from the public for a 30 day period until June 29, 2012, and were posted with the petition on MBDA's Web site.

In response, the Agency received 37 comments. Of these comments, 19 were in support of ADC's petition, while 13 expressed opposition, and five were disqualified for use of offensive or derogatory language. After careful review of the application and comments as well as independent research, MBDA has determined that the Petition is not currently supported by sufficient evidence to prove the necessary elements of social or economic disadvantage within the specific requirements of 15 CFR 1400.4(a) of the MBDA regulations and applicable case law.

Procedural Requirements for Determination of Group Eligibility for MBDA Assistance

A group applying for designation as socially or economically disadvantaged within the meaning of the MBDA regulations must submit a written application to the Minority Business Development Agency containing a statement of request, a detailed description of the applicant group delineating sufficiently distinctive traits of its members, a brief summary of the submission, a narrative description of documentation in support of the claim, and a conclusion.[6] Along with an adequate petition, MBDA must consider the comments received and may also consider any additional information gathered by the Agency from independent research.[7]

On January 11, 2012, the ADC filed a petition on behalf of the Arab-American community, requesting that MBDA designate Arab-Americans as a socially or economically disadvantaged group. The Petition defines the Arab-American group as persons who can trace their ancestry to one of the Arabic-speaking countries or areas of the world categorized as Arab countries.

According to the Petition, these countries include, but are not limited to: Algeria, Bahrain, Djibouti, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Qatar, Somalia, Saudi Arabia, Sudan, Syria, Tunisia, United Arab Emirates, and Yemen.[8] The Petition included Census data showing 1.2 million Americans who report Arab ancestry.[9] The Petition also includes a description of unique cultural and ethnic traits such as common Arabic language, traditional music, unique food, as well as an Arab-American press catering to this community.

As required by its regulations, MBDA published the Petition in the **Federal Register** for 30 days and requested general comments and comments on specific social and economic issues related to Arab-Americans. This is the first time that MBDA has considered the inclusion of a group on the basis of racial or ethnic classification under the regulations set forth in 15 CFR 1400.1 through 1400.6 MBDA published several notices extending the time period for making a decision in order to consider fully the issues presented by the Petition, to conduct independent research, and to consider the implications of relevant legal precedent.[10] These issues are addressed below.

Substantive Requirements for Group Eligibility

For a group to become eligible for MBDA's services, it must submit a petition to MBDA demonstrating, by a preponderance of the evidence, that the group is socially or economically disadvantaged. The regulations at section 1400.2(b) define socially disadvantaged persons as ''persons who have been subjected to cultural, racial or ethnic prejudice because of their identity as members of a group without regard to their individual qualities.'' Section 1400.2(c) of the regulations defines economically disadvantaged persons as ''persons whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities because of their identity as members of a group without regard to their individual qualities, as compared to others in the same line of business and competitive market area.'' The petition must prove that the social or economic disadvantage has produced impediments in the business world for members of the group which are not common to all business people in the same or similar business and marketplace.

The regulations also set out several nonexclusive categories of evidence that will be considered including: national income level and standard of living statistical data; evidence of employment and educational discrimination; evidence of denial of access to educational, professional, and social organizations; the kinds of business opportunities available to members of the group; the availability of capital, technical, and managerial resources;

[1] 15 CFR 1400.1(b) (1984).

[2] *See* Executive Order 11625, sec. 6 (1971); 15 CFR 1400.1(b) and (c) (1984).

[3] 15 CFR 1400.1(b) and (c) (1984).

[4] *Id.* at § 1400.4(a).

[5] Petition for Inclusion of the Arab-American Community in the Groups Eligible for MBDA Services, 77 FR 31,765–31,767 (May 30, 2012). If the applicant has submitted a Petition for formal designation as a socially or economically disadvantaged group, ''the Department of Commerce will publish a notice in the **Federal Register** that formal designation of this group will be considered'' requesting comments that will help in making a final determination. *See* 15 CFR 1400.5. MBDA extended the deadline for making its decision until March 1, 2013. *See* Petition for Inclusion of the Arab-American Community in the Groups Eligible for MBDA Services, 77 FR 72254 (December 5, 2012).

[6] 15 CFR 1400.3 (1984).

[7] *Id.* at § 1400.5.

[8] American-Arab Anti-Discrimination Committee Petition for Determination of Group Eligibility for MBDA Assistance (filed, January 11, 2012) at 3 (ADC Petition or Pet.). The Petition also includes Palestinian-Americans within this group.

[9] Pet. at 4 (citing Arab American Institute, *Demographics: Religion (2002 Zogby International Survey), http://www.aaiusa.org/arabamericans/22/demographics* (last visited December 30, 2011)). *See also* De la Cruz, G. Patricia and Brittingham, Angela. *US Census Bureau Census 2000 Brief, The Arab Population: 2000* (December 2003) *available at http://www.census.gov/prod/2003pubs/c2kbr-23.pdf.*

[10] *Adarand Constructors, Inc.* v. *Pena,* 515 U.S. 200 (1995).

and any other evidence of denial of opportunity or access to those things that would enable successful participation in the American economic system.[11] While the petitioner has the burden of providing sufficient evidence to meet the standard, MBDA as trier of fact may gather additional information which supports or refutes the group's request.[12]

Since the promulgation of the MBDA regulations, the U.S. Supreme Court issued its opinion in *Adarand* v. *Pena,* which applied strict scrutiny to government programs that rely on racial classifications.[13] To the extent that it applies, strict scrutiny analysis requires that in order to meet a constitutional challenge, the program must serve a compelling government interest and must be narrowly tailored to serve that interest. Courts have repeatedly found that the government has a compelling government interest in rectifying past discrimination caused by the government and in not passively participating in private systems of discrimination. To establish that compelling interest, the government must show a strong basis in evidence that a race based program is necessary to remedy racial or ethnic discrimination. Courts usually rely on a showing that includes statistical evidence of underrepresentation or underutilization in finding that the ''strong basis in evidence'' standard has been met. Therefore, to ensure that its programs meet constitutional standards as applicable, MBDA requires a group seeking eligibility for MBDA programs to provide substantial evidence of impediments in the business world to show a need for extending the program to that group.

Social or Economic Disadvantage Evidentiary Standard

In order to establish social or economic disadvantage for purposes of MBDA programs, a petition must present evidence of either social or economic disadvantage that meets each prong of the standard set out in the regulation.

For social disadvantage, the petition must present evidence establishing that the group has been subjected to cultural, racial, or ethnic prejudice because of their identity as members of a group without regard to their individual qualities.[14] The petition must show that the social disadvantage created by such prejudice is chronic, long standing, substantial, and beyond the control of the group's members. Finally, the evidence must demonstrate that the social conditions experienced by the group have produced impediments in the business world for members of the group that are not common to those faced by all business people in the same or similar businesses or marketplaces.[15]

For economic disadvantage, the petition must present evidence demonstrating that members of the group have had their ability to compete in the free enterprise system impaired due to diminished capital and credit opportunities because of their identity as members of the group without regard to their individual qualities, as compared to others in the same line of business and competitive market areas. The evidence in the petition must establish that the economic disadvantage created by such prejudice is chronic, long standing, substantial, and beyond the control of the group's members, as compared to others in the same line of business or market area. Finally, the economic conditions must have produced impediments in the business world for the group that are not common to those faced by all business people in the same or similar businesses or marketplaces.[16]

Application of Standard to Arab-American Petition

MDBA has reviewed the evidence presented in the Petition and the comments, as well as its own recognition of barriers Arab-Americans have faced, and has determined that, while there is qualitative evidence that demonstrates that Arab-Americans have faced significant prejudice in numerous instances, there is insufficient evidence that this undeniable prejudice has impaired their ability to compete in the free enterprise system due to diminished capital and credit opportunities. In addition, the available evidence does not, for purposes of this program, adequately show chronic, long standing, and substantial bias that has produced impediments in the business world for members of the group that are not common to all business people in the same or similar business and market place.[17]

The Petitioner adduces evidence that Arab-Americans have faced significant prejudice in the form of hate crimes and other adverse treatment based on characteristics, distinct clothing, or self-identification.[18] The Petition illustrates a sharp increase in prejudice since 9/11 by citing the Senate testimony of Assistant Attorney General Thomas E. Perez, that ''more than 800 incidents involving violence, threats, vandalism, and arson against persons perceived to be Muslim or to be of Arab, Middle Eastern, or South Asian origin'' were investigated by the Department of Justice between 2001 and 2011.[19] The testimony also highlights a 1,600 percent increase in reports to the FBI of discrimination and harassment of Arab-Americans following 9/11. An ADC report submitted in support of the Petition demonstrates a rise in the level of employment discrimination complaints filed by Arab-Americans in the period following 9/11 and includes instances where employees were released without explanation or were called derogatory names in the workplace, which led to their subsequent resignation.[20] This increase in prejudicial treatment is also suggested by evidence from the Equal Employment Opportunity Commission (EEOC) documenting 1,035 charges filed under Title VII alleging post-9/11 backlash employment discrimination.[21]

The Petition and supporting evidence demonstrates that, in too many instances, Arab-Americans have faced prejudice that has resulted in incidents of violence, assault, and other undeniably adverse treatment.[22] But the Petition fails to connect this evidence to a showing of impediments in the business world for members of the group that are not common to all business people in the same or similar business and marketplace. Nor does the Petition establish that Arab-Americans have had their ability to compete in the

[11] 15 CFR 1400.4(b) (1984).

[12] *Id.* at § 1400.5 (1984).

[13] *Adarand Constructors, Inc.* v. *Pena,* 515 U.S. 200 (1995).

[14] 15 CFR 1400.2(b).

[15] *Id.* at § 1400.4(a).

[16] *Id.* § 1400.4(a).

[17] In the absence of sufficient evidence in the Petition and comments, the Agency searched sources available to it and was unable to locate the type of statistical or empirical studies necessary to establish this element both for purposes of the regulation and as required to meet constitutional standards under existing case law.

[18] Pet. at 15–16, 18, 23–25.

[19] *Id.* at 17 (citing *Statement of Thomas E. Perez, AAG Civil Rights Division before Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights ''Protecting the Civil Rights of Muslim Americans'' March 29, 2011* available at *http://www.judiciary.senate.gov/hearings/testimony.cfm?id=e655f9e2809e5476862f735da169475f&wit_id=e655f9e2809e5476862f735da169475f-1-0).*

[20] *Id.* at 23 (citing *2003–2007 Report on Hate Crimes and Discrimination against Arab Americans,* American-Arab Anti-Discrimination Committee Research Institute at 34–38 (2008), available at *http://www.adc.org/PDF/hcr07.pdf).*

[21] *Id.* at 25.

[22] However, nothing in the forgoing discussion or any other part of this response to petition should be construed as MBDA's acceptance of the Petition's assertions that the federal government has discriminated against Arab-Americans.

free enterprise system impaired due to diminished capital and credit opportunities.

Specifically, the Petition fails to provide evidence of the type MBDA requires to establish a relationship between any discriminatory treatment and business impediments experienced by Arab-American businesses as a group that are not common to all business people in the same or similar market place. Section III of the Petition states that:

> Arab-Americans suffer from discrimination, prejudice and cultural bias in the workplace. This employment discrimination has produced obstacles in the business world for Arab-Americans—both as employees and entrepreneurs. Members of the group have no control over such discrimination. Other entrepreneurs and individuals, outside of the group, do not suffer from such discrimination and bias.[23]

But, the Petition does not substantiate this assertion by providing evidence to support the statement, such as statistical measures of the impact that employment discrimination complaints have on Arab-American business success or workplace attainment. The EEOC complaints discussed above must be coupled with an analysis or study of the impact of discrimination on Arab-Americans in the business world.

In addition, a 2008 Arab American Institute Foundation study produced results contrary to the Petitioner's arguments. This study found that Arab-American households' mean individual income is 27% higher than the national average and that the group shows higher than average educational attainment.[24] These figures are not dispositive, but do suggest that prejudice Arab-Americans have faced may not have impacted their economic opportunities to the extent necessary to establish that Arab-Americans' businesses require the technical and outreach services that MBDA provides.

The Petition also does not establish with the necessary type of evidence that Arab-Americans have experienced diminished capital and credit opportunities. The descriptions of immigration controls, employment discrimination complaints, and post-9/11 programs that the Petition states target Arab-Americans do not demonstrate that Arab-Americans are unable to compete in the free enterprise system due to diminished capital and credit opportunities. Statistical or empirical evidence demonstrating a relationship between the discrimination suffered by the group and business impediments, or impaired access to capital, credit, contracts, and other business opportunities experienced by the group is necessary to show the social or economic conditions required to qualify the Petitioners for eligibility for MBDA's programs that assist businesses in obtaining access to capital, credit, contracting, and other business opportunities. The comments submitted in support of the Petition similarly lack this supporting information.

Accordingly, MBDA does not currently have sufficient evidence to recognize the Arab-American community as a minority group that is socially or economically disadvantaged within the specific meaning of the regulation because the Petition is not supported by sufficient evidence to meet the necessary elements of social or economic disadvantage as required by 15 CFR 1400.4(a) of the MBDA regulations and applicable case law. As such, MBDA has returned the Petition to ADC for further consideration consistent with this response to petition.

Dated: February 27, 2013.

David Hinson,

Director.

[FR Doc. 2013–04955 Filed 3–4–13; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[EPA–HQ–TRI–2006–0319; FRL–9787–1]

RIN 2025–AA19

Acetonitrile; Community Right-to-Know Toxic Chemical Release Reporting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Denial of petition.

SUMMARY: EPA is denying a petition to remove acetonitrile from the list of chemicals subject to reporting requirements under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) and section 6607 of the Pollution Prevention Act of 1990 (PPA). EPA has reviewed the available data on this chemical and has determined that acetonitrile does not meet the deletion criterion of EPCRA section 313(d)(3). Specifically, EPA is denying this petition because EPA's review of the petition and available information resulted in the conclusion that acetonitrile meets the listing criterion of EPCRA section 313(d)(2)(B) due to its potential to cause death in humans.

FOR FURTHER INFORMATION CONTACT: Daniel R. Bushman, Environmental Analysis Division, Office of Information Analysis and Access (2842T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 202–566–0743; fax number: 202–566–0677; email: *bushman.daniel@epa.gov*, for specific information on this notice. For general information on EPCRA section 313, contact the Emergency Planning and Community Right-to-Know Hotline, toll free at (800) 424–9346 or (703) 412–9810 in Virginia and Alaska or toll free, TDD (800) 553–7672, http://www.epa.gov/epaoswer/hotline/.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this notice apply to me?

You may be potentially affected by this action if you manufacture, process, or otherwise use acetonitrile. Potentially affected categories and entities may include, but are not limited to:

Category	Examples of potentially affected entities
Industry	Facilities included in the following NAICS manufacturing codes (corresponding to SIC codes 20 through 39): 311*, 312*, 313*, 314*, 315*, 316, 321, 322, 323*, 324, 325*, 326*, 327, 331, 332, 333, 334*, 335*, 336, 337*, 339*, 111998*, 211112*, 212324*, 212325*, 212393*, 212399*, 488390*, 511110, 511120, 511130, 511140*, 511191, 511199, 512220, 512230*, 519130*, 541712*, or 811490*. *Exceptions and/or limitations exist for these NAICS codes.

[23] *Id.* at 21.

[24] *Comment of Nicholas Legendre, http://www.mbda.gov/sites/default/files/AAPetitioncomments_asof062912.pdf at 56* (citing Arab American Institute Foundation, *Quick Facts About Arab Americans, http://aai.3cdn.net/afbc33810b07728c5a_oim6bx98f.pdf).*

Category	Examples of potentially affected entities
	Facilities included in the following NAICS codes (corresponding to SIC codes other than SIC codes 20 through 39): 212111, 212112, 212113 (correspond to SIC 12, Coal Mining (except 1241)); or 212221, 212222, 212231, 212234, 212299 (correspond to SIC 10, Metal Mining (except 1011, 1081, and 1094)); or 221111, 221112, 221113, 221119, 221121, 221122, 221330 (Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce) (correspond to SIC 4911, 4931, and 4939, Electric Utilities); or 424690, 425110, 425120 (Limited to facilities previously classified in SIC 5169, Chemicals and Allied Products, Not Elsewhere Classified); or 424710 (corresponds to SIC 5171, Petroleum Bulk Terminals and Plants); or 562112 (Limited to facilities primarily engaged in solvent recovery services on a contract or fee basis (previously classified under SIC 7389, Business Services, NEC)); or 562211, 562212, 562213, 562219, 562920 (Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 et seq.) (correspond to SIC 4953, Refuse Systems).
Federal Government	Federal facilities.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Some of the entities listed in the table have exemptions and/or limitations regarding coverage, and other types of entities not listed in the table could also be affected. To determine whether your facility would be affected by this action, you should carefully examine the applicability criteria in part 372 subpart B of Title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. How can I get copies of this document and other related information?

EPA has established a docket for this action under Docket ID No. EPA–HQ–TRI–2006–0319. All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the OEI Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. This Docket Facility 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.

II. Introduction

A. Statutory Authority

This action is taken under sections 313(d) and 313(e)(1) of EPCRA, 42 U.S.C. 11023. EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) (Pub. L. 99–499).

B. Background

Section 313 of EPCRA, 42 U.S.C. 11023, requires certain facilities that manufacture, process, or otherwise use listed toxic chemicals in amounts above reporting threshold levels to report their environmental releases and other waste management quantities of such chemicals annually. These facilities must also report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of the PPA, 42 U.S.C. 13106. Congress established an initial list of toxic chemicals subject to reporting that comprised more than 300 chemicals and 20 chemical categories.

EPCRA section 313(d) authorizes EPA to add or delete chemicals from the list and sets criteria for these actions. EPCRA section 313(d)(2) states that EPA may add a chemical to the list if any of the listing criteria in Section 313(d)(2) are met. Therefore, to add a chemical, EPA must demonstrate that at least one criterion is met, but need not determine whether any other criterion is met. Conversely, to remove a chemical from the list, EPCRA section 313(d)(3) dictates that EPA must demonstrate that none of the listing criteria in Section 313(d)(2) are met. The EPCRA section 313(d)(2) criteria are:

(A) The chemical is known to cause or can reasonably be anticipated to cause significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring, releases.

(B) The chemical is known to cause or can reasonably be anticipated to cause in humans—

(i) cancer or teratogenic effects, or

(ii) serious or irreversible–

(I) reproductive dysfunctions,

(II) neurological disorders,

(III) heritable genetic mutations, or

(IV) other chronic health effects.

(C) The chemical is known to cause or can be reasonably anticipated to cause, because of

(i) its toxicity,

(ii) its toxicity and persistence in the environment, or

(iii) its toxicity and tendency to bioaccumulate in the environment, a significant adverse effect on the environment of sufficient seriousness, in the judgment of the Administrator, to warrant reporting under this section.

EPA often refers to the section 313(d)(2)(A) criterion as the ''acute human health effects criterion;'' the section 313(d)(2)(B) criterion as the ''chronic human health effects criterion;'' and the section 313(d)(2)(C) criterion as the ''environmental effects criterion.''

EPA issued a statement of petition policy and guidance in the **Federal Register** of February 4, 1987 (52 FR 3479) to provide guidance regarding the recommended content and format for submitting petitions. On May 23, 1991 (56 FR 23703), EPA issued guidance regarding the recommended content of petitions to delete individual members of the section 313 metal compounds categories. EPA has also published in the **Federal Register** of November 30, 1994 (59 FR 61432) a statement clarifying its interpretation of the section 313(d)(2) and (d)(3) criteria for modifying the section 313 list of toxic chemicals.

III. What is the description of the petition and the regulatory status of acetonitrile?

Acetonitrile is on the list of toxic chemicals subject to the annual release reporting requirements of EPCRA section 313 and PPA section 6607. Acetonitrile was among the list of chemicals placed on the EPCRA section 313 list by Congress. Acetonitrile is listed under the Clean Air Act (CAA) as a volatile organic compound (VOC) and a hazardous air pollutant (HAP). Acetonitrile is also on the list of hazardous constituents (Appendix VIII to Part 261) and can qualify as listed

hazardous waste (U003) under the Resource Conservation and Recovery Act (RCRA).

On February 4, 1998, EPA received a petition from BP Chemicals Inc. (BP) and GNI Chemicals Corporation (GNICC) to delete acetonitrile from the list of chemicals reportable under EPCRA section 313 and PPA section 6607, stating that acetonitrile meets all of the criteria for delisting under EPCRA section 313(d)(3). On March 5, 1999 (64 FR 10597), EPA denied the petition based on a determination that acetonitrile meets the listing criteria of EPCRA section 313(d)(2)(B) and (d)(2)(C) due to its potential to cause neurotoxicity and death in humans and its contribution to the formation of ozone in the environment.

In September 2000, based on additional reviews, EPA reversed its previous position that acetonitrile was a chronic neurotoxicant (Ref. 1).

On June 28, 2002, EPA received a second petition from BP to delete acetonitrile from the list of chemicals reportable under EPCRA section 313. Specifically, BP argues that acetonitrile meets all of the criteria for delisting under EPCRA section 313(d)(3) because: (1) Under generally accepted scientific principles, chronic mortality is not an issue for concern; and (2) EPA's Office of Air Quality Planning and Standards (OAQPS) has concluded that acetonitrile does not have sufficient photochemical reactivity to contribute to ozone formation. Subsequent to BP's filing of the petition on June 28, 2002, BP formed Innovene USA LLC as its olefin, derivatives and refining group, which was then acquired from BP by INEOS USA, LLC (INEOS), which has taken over the petition.

IV. What is EPA's technical review of acetonitrile?

In response to the petition to delete acetonitrile from the list of chemicals reportable under EPCRA section 313 and PPA section 6607, EPA prepared a Technical Review of Acetonitrile (Methyl Cyanide) (Ref. 2). The sections below summarize the human health hazard information contained in the Technical Review. The review did not consider acetonitrile's status as a volatile organic compound (VOC) and thus its contribution to the formation of ozone in the environment since EPA no longer considers these factors as a basis for listing under EPCRA section 313(d)(2) (70 FR 37698).

A. Metabolism

Acetonitrile is metabolized to inorganic cyanide through the intermediate production of hydrogen cyanide. Data demonstrate that the metabolism to cyanide is oxygen- and NADPH-dependent (Ref. 3), and mediated by cytochrome P450 isozyme 2E1 (or P–450j) production of a reactive intermediate, methyl cyanohydrine (Refs. 4, 5, and 6). Formaldehyde and formic acid are also by-products of acetonitrile metabolism (Ref. 4). Cyanide is further oxidized and conjugated to thiocyanate, a less toxic compound that is excreted in urine, but one that has been shown to interfere with thyroid function (Ref. 7).

B. Toxicity Evaluation

1. Effects of Acute Exposure

Humans acutely exposed to sublethal doses of acetonitrile developed effects that are generally attributed to metabolism of acetonitrile to cyanide (Ref. 8). Several cases were reported in which children or adults ingested large amounts of acetonitrile (≈250 to 4,000 milligrams/kilogram (mg/kg)) (Ref. 9). Symptoms exhibited by poisoning victims include anxiety, confusion, hyperpnea, dyspnea, rapid pulse, unconsciousness, and convulsions (Ref. 9). Cyanide was detected in the blood of these individuals. Case reports of acute occupational exposure to acetonitrile indicate that workers exhibited nausea, shallow and/or irregular respiration, and impaired motor activity. An autopsy of a worker who died shortly after exposure revealed cerebral, thyroid, liver, splenic, and renal congestion (Ref. 9). Gastric erosion has been reported in individuals who ingested acetonitrile (Refs. 10 and 11).

In animals, oral LD_{50} values (i.e., the dose of a chemical that is lethal to 50 percent of the test organisms) have been reported for the mouse (269–453 mg/kg) and the rat (1,730–4,050 mg/kg) and inhalation LC_{50} values (i.e., the concentration of a chemical that is lethal to 50 percent of the test organisms) of 12,000, 16,000, and 7,551–12,435 parts per million (ppm) have been reported for the rat for 2, 4, and 8 hour exposures, respectively, and for the mouse following 1–2 hour exposures (2,300–5,700 ppm) (Ref. 9). A 1-hour LC_{50} estimate for acetonitrile in mice was reported to be 2,693 ppm (Ref. 6). A recent study (Ref. 12) reported a slightly higher oral LD_{50} of 617 mg/kg for Crl:CD–1(ICR)BR mice and an inhalation LC_{50} of 3,587 ppm for this strain. Observational signs of toxicity reported in animals after acute exposure to acetonitrile include dyspnea, tachypnea, tremors, and convulsions in various studies (Ref. 9).

2. Effects of Subchronic and Chronic Exposure

Subchronic inhalation exposure to acetonitrile resulted in an increase in mortality in rats at 1,600 ppm (calculates to approximately 505 mg/kg-day) and in mice at 800 ppm (calculates to approximately 402 mg/kg-day) (Ref. 13).

Following subchronic inhalation exposure in rats, the mortality incidence was 0/20 in each of the 0, 100, 200 and 400 ppm groups, 1/20 in the 800 ppm group (one death occurring on day 5), and 9/20 in the 1,600 ppm group (four deaths occurring on day 2, one each on days 7, 9, 10, 11, and 23) (Ref. 13). Clinical signs at the two high-concentration groups included hypoactivity and ruffled fur during the first week. Ataxia, abnormal posture, and clonic convulsions occurred in the 1,600 ppm males that died. In addition, a decrease in hematocrit, hemoglobin, and erythrocytes was observed in male rats at 1,600 ppm and in female rats at ≥800 ppm. Changes in organ weights were also observed, primarily at the highest dose in male rats and at ≥800 ppm in female rats, and include decreases in absolute and relative thymus weight, increases in absolute and/or relative liver and kidney weight, and decreases and increases in brain and heart weight, respectively. Histopathologic effects were limited to rats that died at 800 and 1,600 ppm; effects observed include congestion, edema, and hemorrhage in the lung alveoli.

Following subchronic inhalation exposure in mice, the mortality incidence was 0/20 in each of the 0, 100 and 200 ppm groups, 1/20 in the 400 ppm group (death occurring on day 13), 5/20 in the 800 ppm group (deaths occurring on days 20, 21, 45, 69, 89) and 20/20 in the 1,600 ppm group (all deaths occurring by day 21) (Ref. 13). Changes in organ weights were observed, including increased absolute and/or relative liver weight at ≥100 ppm in males and ≥400 ppm in females and increased relative lung weight at ≥200 ppm in males.

Effects were not observed in rats or mice following chronic inhalation exposure to 400 ppm (calculates to approximately 126 mg/kg-day) acetonitrile in rats and 200 ppm (calculates to approximately 100 mg/kg-day) acetonitrile in mice (Ref. 13). The concentrations at which effects were observed in the 13-week study were not tested in the chronic study, and, in addition, two of the three principal reviewers of the study suggested that the highest exposure concentrations applied

in the chronic study (200 ppm-mouse; 400 ppm-rat) were too low and one reviewer suggested concentrations should have been as high as 800 ppm (Ref. 13).

3. Carcinogenicity

There are no studies evaluating the carcinogenicity of acetonitrile in humans. Other data pertinent to the assessment of potential carcinogenicity include a National Toxicology Program (NTP) cancer bioassay in mice and rats. NTP concluded that the evidence for carcinogenicity via inhalation of acetonitrile in male F344/N rats was equivocal (Ref. 13). Although there was a statistically significant positive trend in the incidences of hepatocellular adenomas, carcinomas, and adenomas and carcinomas (combined) in male rats only, the incidences were not statistically significant by pairwise comparison or by life table analysis. There was no evidence of carcinogenicity in female rats or in either male or female B6C3F1 mice (Ref. 13).

4. Developmental and Reproductive Toxicity

Following acute inhalation exposure to 3,800 ppm acetonitrile to hamsters on a single day during gestation day 8 (GD8), an increase in maternal toxicity and mortality was observed; at higher exposure concentrations (≥5,000 ppm), an increase in severe fetal abnormalities, including exencephaly, encephalocoele, and rib fusions was reported (Ref. 14). Following acute oral ingestion of acetonitrile in hamsters on a single day at GD8, a decrease in fetal body weight was observed at the lowest observed adverse effect level (LOAEL) of 100 mg/kg (the LOAEL for maternal toxicity was 300 mg/kg) (Ref. 14). In rats, a single oral dose of 2,000 mg/kg on GD10 resulted in dysmorphogenic features, including misdirected allantois and/or trunk and caudal extremity (Ref. 15). Mortality was not observed in dams exposed to 2,000 mg/kg acetonitrile on GD10; however, dams exhibited clinical signs of toxicity including piloerection, prostration, and/or tremors, and caused unspecified maternal weight loss between GDs 10 and 12 (Ref. 15). In a oral gavage study, New Zealand white rabbits were administered acetonitrile on GDs 6–18, which resulted in a decrease in the average number of live fetuses per litter at 30 mg/kg-day, as well as an increase in maternal mortality and anorexia, ataxia, decreased motor activity, bradypnea, dyspnea, and impaired righting reflex (Ref. 16).

Inhalation and oral exposure in rats and rabbits resulted in both maternal and developmental toxicity. Maternal mortality was observed in rats at inhalation concentrations of 1,827 ppm (Ref. 17) and oral doses of 275 mg/kg-day (Ref. 18), and at 30 mg/kg-day in rabbits (Ref. 16). In rats, inhalation exposure to 1,827 ppm resulted in an increase in the percentage of nonlive implants per litter and early resorptions (Ref. 17). In rats, there was an increase in post-implantation loss and in the number of fetuses with unossified sternebrae and a decrease in number of live fetuses per dam at the oral dose of 275 mg/kg-day (Ref. 18). A decrease in the average number of live fetuses per litter was observed in rabbits at 30 mg/kg-day (Ref. 16). While developmental toxicity was observed at doses that produced maternal toxicity or mortality, it is inadequate to assume that the developmental effects result only from maternal toxicity, and the results may indicate that both lifestages, the adult and developing offspring, are sensitive to the dose level (Ref. 19).

V. What is EPA's summary of the technical review?

Based on the available data, and given the severity of the effect, mortality, EPA concludes that there is sufficient evidence to support a concern for moderately high toxicity from exposure to acetonitrile. In assessing mortality following acetonitrile exposure, the patterns in the timing of death across exposures demonstrates the chronic nature of the effect. Mortality was observed in the 13-week mouse inhalation study in the 800 and 1600 ppm treatment groups (Ref. 13). The first occurrence of mortality in the 800 ppm treatment group was not observed until day 20 and single deaths continued on days 21, 45, 69 and 89 of the 13-week study. This pattern of mortality is dissimilar to that observed in the 13-week mouse inhalation study at 1,600 ppm, where initial deaths were observed in the first week and all mice died by day 21 (Ref. 13).

Based on the observed pattern of death in the 800 ppm treatment group of the NTP 13-week mouse inhalation study, beginning at the end of the third week and extending through the termination of the study, it can be reasonably anticipated that additional acetonitrile-induced mortality would have continued beyond the termination of the study and the sacrifice of surviving animals. Because the mortalities extended from the third week of the study to study termination, the data indicates that the mortality observed in the 800 ppm treatment group is not due to a single acute exposure to sufficiently high acetonitrile concentrations, but rather is best explained as being the result of long-term repeated exposures. The observed exposure-response relationship for acetonitrile demonstrates that a threshold exists at which acetonitrile exposure levels are sufficient to cause mortality from chronic exposure, and, as such, mortality would not necessarily be expected following chronic exposure at the doses tested in the NTP 2-year study because the acetonitrile exposure levels in the study design were not sufficient to cause mortality.

In addition, in 1999, EPA's Integrated Risk Information System (IRIS) Toxicological Review of Acetonitrile (Ref. 8) set the reference concentration (RfC) for acetonitrile based on this same 13-week mouse inhalation study (Ref. 13). The IRIS Toxicological Review of Acetonitrile identified the 400 ppm concentration in the NTP (1996) mouse study as a frank effect level (FEL) and the critical effect in the derivation of the reference concentration (RfC), given the death of a mouse at week 2 at 400 ppm and the increased mortality at 800 ppm. The FEL is a level of exposure or dose that produces irreversible, adverse effects at a statistically or biologically significant increase in frequency or severity between those exposed and those not exposed. The RfC is an estimate of a continuous inhalation exposure to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects during a lifetime. Such a ''lifetime'' exposure value, set by IRIS based on the 13-week mouse inhalation study, is based on chronic effects, and would be unnecessary if IRIS found only acute effects.

VI. What is EPA's rationale for the denial?

EPA is denying the petition to delete acetonitrile from the EPCRA section 313 list of toxic chemicals. This denial is based on EPA's conclusion that acetonitrile can reasonably be anticipated to cause serious or irreversible chronic health effects in humans. Based on the available data, and given the severity of the effect, mortality, EPA concludes that there is sufficient evidence to support a concern for moderately high toxicity from chronic exposure to acetonitrile.

Because EPA believes that acetonitrile has moderately high chronic toxicity, EPA does not believe that an exposure assessment is appropriate for determining whether acetonitrile meets the criteria of EPCRA section 313(d)(2)(B). This determination is

consistent with EPA's published statement clarifying its interpretation of the section 313(d)(2) and (d)(3) criteria for modifying the section 313 list of toxic chemicals (59 FR 61432, November 30, 1994).

VII. References

EPA has established an official public docket for this action under Docket ID No. EPA–HQ–TRI–2006–0319. The public docket includes information considered by EPA in developing this action, including the documents listed below, which are electronically or physically located in the docket. In addition, interested parties should consult documents that are referenced in the documents that EPA has placed in the docket, regardless of whether these referenced documents are electronically or physically located in the docket. For assistance in locating documents that are referenced in documents that EPA has placed in the docket, but that are not electronically or physically located in the docket, please consult the person listed in the above **FOR FURTHER INFORMATION CONTACT** section.

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List of Subjects in 40 CFR Part 372

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, and Toxic chemicals.

Dated: February 25, 2013.

Arnold E. Layne,

Director, Office of Information Analysis and Access.

[FR Doc. 2013–04933 Filed 3–4–13; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2009–0062; 4500030114]

RIN 1018–AW85

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Buena Vista Lake Shrew

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; revision and reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the comment period on the July 10, 2012, revised proposal to designate critical habitat for the Buena Vista Lake shrew (*Sorex ornatus relictus*) (shrew) under the Endangered Species Act of 1973, as amended (Act). We announce a revision of the unit map labels. We provide maps with correct labels for all proposed units herein. We also announce the availability of a draft economic analysis (DEA) of the revised critical habitat proposal, and of an amended required determinations section of the revised proposal. We are reopening the comment period for an additional 60 days to allow all interested parties an opportunity to comment on the revised proposed rule, the associated DEA, and the amended required determinations section. Furthermore, we announce a public hearing for the purpose of taking oral or written comments on those documents. Comments previously submitted need not be resubmitted, as they will be fully considered in preparation of the final rule.

DATES: *Written Comments:* We will consider comments received on or before May 6, 2013. Comments must be received by 11:59 p.m. Eastern Time on the closing date. Any comments that we receive after the closing date may not be

considered in the final decision on this action.

Public Hearing: We will hold the public hearing on March 28, 2013. The first hearing session will start at 1:00 p.m. Pacific Time with doors opening at 12:30, and the second session at 6 p.m. with doors opening at 5:30. The location of the hearing is under **ADDRESSES,** below.

ADDRESSES: *Document availability:* You may obtain copies of the DEA and the revised proposed rule on the Internet at *http://www.regulations.gov* at Docket No. FWS–R8–ES–2009–0062, or by mail from the Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Written Comments: You may submit written comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* Search for FWS–R8–ES–2009–0062, which is the docket number for this rulemaking.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R8–ES–2009–0062; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203. Or deliver them by hand at the public hearing (see Public Hearing, below).

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

Public hearing: We will hold a public hearing at the Doubletree Hotel, 3100 Camino Del Rio Court, Bakersfield, California. The hearing will take place on the date and times indicated above under **DATES**. People needing reasonable accommodations in order to attend and participate should contact Robert Moler, External Affairs Supervisor, Sacramento Fish and Wildlife Office, as soon as possible (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Jan Knight, Acting Field Supervisor, or Karen Leyse, Listing Coordinator, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room W–2605, Sacramento, CA 95825; by telephone (916) 414–6600; or by facsimile (916) 414–6713. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We will accept written comments and information during this reopened comment period on our revised proposed designation of critical habitat for the shrew that we published in the **Federal Register** on July 10, 2012 (77 FR 40706), our DEA of the revised proposed designation, and the amended required determinations provided in this document. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat is not prudent.

(2) Specific information on:

(a) The distribution of the shrew, including the locations of any additional populations of this species that would help us further refine boundaries of critical habitat;

(b) The amount and distribution of shrew habitat, including areas that provide habitat for the shrew that we did not discuss in the revised proposed critical habitat rule;

(c) Any areas occupied by the species at the time of listing that contain features essential for the conservation of the species that we should include in the designation, and why; and

(d) Any areas not occupied at the time of listing that are essential to the conservation of the species, and why.

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed revised critical habitat.

(4) Any foreseeable economic, national security, or other relevant impacts that may result from designating any area that may be included in the final designation. We are particularly interested in any impacts on small entities, and the benefits of including or excluding areas from the proposed designation that are subject to these impacts.

(5) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

(6) Information on the extent to which the description of economic impacts in the DEA is complete and accurate.

(7) The likelihood of adverse social reactions to the designation of critical habitat, as discussed in the DEA, and how the consequences of such reactions, if likely to occur, would relate to the conservation and regulatory benefits of the proposed revised critical habitat designation.

(8) Whether any specific areas being proposed as critical habitat should be excluded under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any particular area outweigh the benefits of including that area under section 4(b)(2) of the Act. See Areas Previously Considered for Exclusion Under Section 4(b)(2) of the Act section below for further discussion.

If you submitted comments or information on the 2009 proposed rule (74 FR 53999, Oct 21, 2009 and 76 FR 23781, April 28, 2011), or on the July 10, 2012, revised proposed rule (77 FR 40706) during any of the previous comment periods, please do not resubmit them. We will incorporate them into the public record as part of this comment period, and we will fully consider them in the preparation of our final determination. Our final determination concerning revised critical habitat will take into consideration all written comments and any additional information we receive during all comment periods. On the basis of public comments, we may, during the development of our final determination, find that some areas proposed are not essential, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion.

You may submit your comments and materials concerning the proposed rule or DEA by one of the methods listed in the **ADDRESSES** section. We request that you send comments only by the methods described in the **ADDRESSES** section.

If you submit a comment via *http://www.regulations.gov,* your entire comment—including any personal identifying information—will be posted on the Web site. We will post all hardcopy comments on *http://www.regulations.gov* as well. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, the DEA, as well as supporting documentation we used in preparing the proposed rule, will be available for public inspection at *http://*

www.regulations.gov at Docket No. FWS–R8–ES–2009–0062, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

It is our intent to discuss in this document only those topics directly relevant to the designation of revised critical habitat for the shrew. For more information on previous Federal actions concerning the shrew, refer to the proposed designation of critical habitat published in the **Federal Register** on October 21, 2009 (74 FR 53999). Additional relevant information may be found in the final rule to designate critical habitat for the Buena Vista Lake shrew published on January 24, 2005 (70 FR 3437). For more information on the shrew or its habitat, refer to the final listing rule published in the **Federal Register** on March 6, 2002 (67 FR 10101), which is available online at *http://www.regulations.gov* at Docket No. FWS–R8–ES–2009–0062, or by mail from the Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Previous Federal Actions

On August 19, 2004, we proposed critical habitat for the shrew on approximately 4,649 acres (ac) (1,881 hectares (ha)) in Kern County, California (69 FR 51417). On January 24, 2005, we published in the **Federal Register** a final rule (70 FR 3437) designating 84 ac (34 ha) of critical habitat for the shrew in Kern County, California. The decrease in acreage between the proposed rule and final rule resulted from exclusions under section 4(b)(2) of the Act and, to a small degree, refinements in our mapping of critical habitat boundaries.

On October 2, 2008, the Center for Biological Diversity filed a complaint, challenging the Service's designation of critical habitat for the shrew, in the U.S. District Court for the Eastern District of California (*Center for Biological Diversity* v. *United States Fish and Wildlife, et al.,* Case No. 08–CV–01490–AWI–GSA). On July 9, 2009, the Court approved a stipulated settlement agreement in which the Service agreed to submit a new proposed rule to the **Federal Register** within 90 days of the signed agreement. The new proposed rule was to encompass the same geographic area as the August 19, 2004 (69 FR 51417), proposed critical habitat designation.

In accordance with the settlement agreement, on October 21, 2009, we published a new proposed rule to designate critical habitat for the Buena Vista Lake shrew (74 FR 53999) encompassing the same geographic area as our August 19, 2004 (69 FR 51417), proposed designation. On April 28, 2011 (76 FR 23781), we announced the availability of a draft economic analysis (DEA) showing the economic impacts of the proposed critical habitat designation. In that document we invited comments on the DEA and amended required determinations, and we reopened the comment period for the proposed critical habitat designation. The document also announced a public hearing, which was held in Bakersfield, California, on June 8, 2011.

On March 6, 2012, the Service was granted an extension by the Court to consider additional information on the shrew that was identified during the 5-year review process (*Center for Biological Diversity* v. *Kempthorne et al.,* Case 1:08–cv–01490–AWI–GSA, filed March 7, 2012). The extension provided for submission of a revised proposed rule to the **Federal Register** on or before June 29, 2012, with submission of a final rule on or before June 29, 2013. The revised proposed rule was published in the **Federal Register** on July 10, 2012 (77 FR 40706), with a 60-day comment period ending September 10, 2012. We will submit for publication in the **Federal Register** a final critical habitat designation for the Buena Vista Lake shrew on or before June 29, 2013.

Correction to Maps

In the revised proposed rule to designated critical habitat for the Buena Vista Lake shrew (77 FR 40706; July 10, 2012), we inadvertently mislabeled the unit names on the maps for units 4–7; the labels for Units 4 and 5 were inadvertently reversed in the revised proposal, as were the labels for Units 6 and 7. The correct index and unit maps are included in the Proposed Regulation Promulgation section of this notice. The correct unit names and unit numbers include: Unit 1, Kern National Wildlife Refuge (Subunits 1A, 1B, and 1C); Unit 2, Goose Lake; Unit 3, Kern Fan Recharge; Unit 4, Coles Levee; Unit 5, Kern Lake; Unit 6, Semitropic; and Unit 7, Lemoore. Please see the July 10, 2012, **Federal Register** notice on the revised proposed designation of critical habitat for the Buena Vista Lake shrew (77 FR 40706) for additional information on the units proposed as critical habitat. The changes set forth in the rule portion of this document are basically administrative and do not add or subtract any proposed critical habitat.

Critical Habitat

Section 3 of the Act defines critical habitat as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If the July 10, 2012, revised proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of the designated critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting critical habitat must consult with us on the effects of their proposed actions, under section 7(a)(2) of the Act.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

When considering the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification or destruction as a result of actions with a Federal nexus (activities conducted, funded, permitted, or authorized by Federal agencies), the educational benefits of mapping areas containing essential features that aid in the recovery of the listed species, and any benefits that may result from designation due to State or Federal laws that may apply to critical habitat.

When considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan. In the case of the shrew, the benefits of critical habitat include public awareness of the presence of the shrew and the importance of habitat protection, and,

where a Federal nexus exists, increased habitat protection for the shrew due to protection from adverse modification or destruction of critical habitat.

As discussed in the revised proposed rule, we have not proposed to exclude any areas from critical habitat designation, although we are considering whether to exclude the Kern Fan Water Discharge (Unit 3) (2,687 ac (1,088 ha)). We also have received comments from several entities requesting to exclude other areas based on economic or other concerns. We will evaluate these additional exclusion requests during our development of a final designation. The final decision on whether to exclude any areas will be based on the best scientific data available at the time of the final designation, including information obtained during the various comment periods and information about the economic impact of designation. Accordingly, we have prepared a draft economic analysis (DEA) concerning the revised proposed critical habitat designation, which is available for review and comment at *http://www.regulations.gov* at Docket No. FWS–R8–ES–2009–0062 (see **ADDRESSES** section). A previous DEA analyzing the economic impacts of the 2009 proposed critical habitat designation (74 FR 53999) is also available at that site. The new DEA analyzes economic impacts from the revised proposed critical habitat designation, published in the **Federal Register** July 10, 2012 (77 FR 40706).

Draft Economic Analysis

The purpose of the DEA is to identify and analyze the potential economic impacts associated with the proposed critical habitat designation for the shrew. The DEA separates conservation measures into two distinct categories according to ''without critical habitat'' and ''with critical habitat'' scenarios. The ''without critical habitat'' scenario represents the baseline for the analysis, considering protections otherwise afforded to the shrew (e.g., under the Federal listing and other Federal, State, and local regulations). The ''with critical habitat'' scenario describes the incremental impacts specifically due to designation of critical habitat for the species. In other words, these incremental conservation measures and associated economic impacts would not occur but for the designation. Conservation measures implemented under the baseline (without critical habitat) scenario are described qualitatively within the DEA, but economic impacts associated with these measures are not quantified. Economic impacts are only quantified for conservation measures implemented specifically due to the designation of critical habitat (i.e., incremental impacts). For a further description of the methodology of the analysis, see Chapter 2 ''Framework of the Analysis,'' of the DEA.

The DEA provides estimated costs of the foreseeable potential economic impacts of the proposed critical habitat designation for the Buena Vista Lake shrew over the next 20 years (2013 to 2032). This was determined to be an appropriate period for analysis because limited planning information is available for most economic activities in the area beyond a 20-year timeframe. It identifies potential incremental costs due to the proposed critical habitat designation; these are those costs attributed to critical habitat that are in addition to the baseline costs attributed to listing.

The DEA quantifies economic impacts of Buena Vista Lake shrew conservation efforts associated with the following categories of activity: (1) Water availability and delivery; (2) agricultural production; and (3) energy development. The DEA considers both economic efficiency and distributional effects that may result from efforts to protect the shrew and its habitat. Economic efficiency effects generally reflect the ''opportunity costs'' associated with the commitment of resources required to accomplish species and habitat conservation. The DEA also addresses how potential economic impacts are likely to be distributed.

The DEA concludes that incremental impacts resulting from the critical habitat designation are limited to additional administrative costs of section 7 consultation. There are two primary sources of uncertainty associated with the incremental effects analysis: (1) The actual rate of future consultation is unknown, and (2) future land use on private lands is uncertain. The analysis does not identify any future projects on private lands beyond those covered by existing baseline projections. Within critical habitat units, section 7 consultation on the shrew has not occurred on private lands that are not covered by conservation plans (Units 2 and 5). As a result, the analysis does not forecast incremental impacts due to conservation measures being implemented as a result of the designation of critical habitat. However, if zoning of these lands changes in the future (such as for urban residential or commercial development) and new projects are identified, conservation measures for the shrew may change.

The DEA estimates total potential incremental economic impacts in areas proposed as revised critical habitat over the next 20 years (2013 to 2032) to be approximately $130,000 (rounded to two significant digits) ($11,000 annualized) in present-value terms applying a 7 percent discount rate (Industrial Economics Inc. (IEc) 2013, p. 4–4). Administrative costs associated with section 7 consultations on a variety of activities (including pipeline construction and removal, delivery of water supplies under the Central Valley Project, pesticide applications for invasive species, and restoration activities) in proposed critical habitat Units 1, 2, and 3 are accounting for approximately 88 percent of the forecast incremental impacts (IEc 2012, p. 4–4). Pacific Gas and Electric (PG&E) has facilities in three of the proposed critical habitat units. Impacts associated with section 7 consultations on PG&E operations and maintenance activities represent approximately 31 percent of the total incremental costs and are expected to total $40,000 over the next 20 years. Incremental impacts due to costs of internal consultations at the Kern National Wildlife Refuge are expected to total $17,000 over the next 20 years, which represents approximately 13 percent of total incremental impacts. Incremental costs of section 7 consultations with the U.S. Army Corps of Engineers due to Clean Water Act (33 U.S.C. 1251 *et seq.*) permitting are estimated to total $15,000, and represent approximately 12 percent of total incremental costs. Finally, the present-value incremental impact of reviewing an update to the City of Bakersfield's management plan and one estimated formal section 7 consultation over the next 20 years for the shrew at Unit 3 is estimated at $7,800, and represents approximately 6 percent of the overall incremental impacts. No incremental impacts are estimated to be incurred by Aera Energy LLC for their activities at the Coles Levee Ecosystem Preserve (IEc 2012, p. 4–9).

The incremental costs described above are further broken down by location of expected incremental costs within the seven proposed critical habitat units. The greatest incremental impacts are due to cost of section 7 consultations forecast to occur for activities within the Kern Fan Recharge area (proposed Unit 3) ($79,000), and make up 61 percent of the overall incremental impacts. The second largest incremental impacts are predicted to occur within the Kern National Wildlife Refuge (proposed Unit 1) with present-

value impacts at $22,000, comprising just over 17 percent of the overall incremental impacts. Incremental impacts associated with section 7 consultations for activities occurring on the Goose Lake Unit (proposed Unit 2), are forecast at $14,000 of present-value impacts, and makes up 11 percent of the overall incremental impacts. Incremental impacts due to section 7 consultations occurring on the Coles Levee Unit (proposed Unit 4) are estimated to be $7,200 in present-value impacts, comprising 6 percent of total incremental impacts. No projected incremental impacts are forecast to occur on the Kern Lake Unit (proposed Unit 5). The consultations forecast for proposed critical habitat Units 2 and 5 are limited to those associated with occasional permitted pipeline, restoration, or water projects. The incremental impacts associated with section 7 consultations for activities occurring on the Semitropic unit (Unit 6) are forecast at $5,900 of present-value impacts and make up 5 percent of the overall incremental impacts. Incremental impacts due to section 7 consultations occurring on the Lemoore unit (Unit 7) are estimated to be $1,100 in present-value impacts, comprising less than 1 percent of total incremental impacts.

As stated earlier, we are soliciting data and comments from the public on the DEA, as well as on all aspects of the proposed rule and our amended required determinations. We may revise the proposed rule or supporting documents to incorporate or address information we receive during the public comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of this species.

Required Determinations—Amended

In our July 10, 2012, revised proposed rule (77 FR 40706), we indicated that we would defer our determination of compliance with several statutes and executive orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders became available in the DEA. We have now made use of the DEA data to make these determinations. In this document, we affirm the information in our proposed rule concerning Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 12630 (Takings), E.O. 13132 (Federalism), E.O. 12988 (Civil Justice Reform), E.O. 13211 (Energy, Supply, Distribution, and Use), the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951). However, based on the DEA data, we are amending our required determination concerning the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. Based on our DEA of the proposed designation, we provide our analysis for determining whether the proposed rule would result in a significant economic impact on a substantial number of small entities. Based on comments we receive, we may revise this determination as part of our final rulemaking.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

To determine if the proposed designation of critical habitat for the shrew would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities, such as water availability and delivery, agricultural production, or energy development. In order to determine whether it is appropriate for our agency to certify that this proposed rule would not have a significant economic impact on a substantial number of small entities, we considered each industry or category individually. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Critical habitat designation will not affect activities that do not have any Federal involvement; designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. In areas where the shrew is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect the species. If we finalize this proposed critical habitat designation, consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

In the DEA, we evaluated the potential economic effects on small entities resulting from implementation of conservation actions related to the proposed designation of critical habitat for the shrew. The DEA did not identify any entities meeting the definition as small (IEc 2012, pp. A–2–A–3). However, we acknowledge that third-party proponents of an action subject to Federal permitting or funding may be indirectly affected by critical habitat designation. The DEA, therefore, includes a brief evaluation of the potential number of third-party small business entities likely to be affected if this critical habitat designation is finalized. In total, the DEA estimates $26,000 in incremental impacts may be borne by third-party participants in section 7 consultation. As shown in Exhibit A–1 of the DEA, none of these third-party entities meets SBA's definition of a small government or

business (IEc 2012, pp. A–4—A–6). Please refer to the DEA of the proposed critical habitat designation for a more detailed discussion of potential economic impacts.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. Information for this analysis was gathered from the Small Business Administration, stakeholders, and the Service. We estimate that no (roughly zero as identified in the DEA) small business will be affected annually by designation of this proposed critical habitat. However, based on comments we receive, we may revise this estimate as part of our final rulemaking. For the above reasons and based on currently available information, we certify that, if promulgated, the proposed critical habitat designation would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

References Cited

A complete list of all references we cited in the proposed rule and in this document is available on the Internet at *http://www.regulations.gov* or by contacting the Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this notice are the staff members of the Sacramento Fish and Wildlife Office, Region 8, U.S. Fish and Wildlife Service.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Proposed Regulation Promulgation

Accordingly, we propose to further amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as proposed to be revised at 77 FR 40706 (July 10, 2012), as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407, 1531–1544, and 4201–4245, unless otherwise noted.

■ 2. In § 17.95, the critical habitat designation for ''Buena Vista Lake Shrew (*Sorex ornatus relictus*)'' is proposed to be amended by revising paragraphs (a)(4) through (15) to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

(a) *Mammals.*

* * * * *

Buena Vista Lake Shrew (*Sorex ornatus relictus*)

* * * * *

(4) *Critical habitat map units.* Data layers defining map units were created on a base of USGS digital ortho-photo quarter-quadrangles, and critical habitat units were then mapped using Universal Transverse Mercator (UTM) Zone 11 coordinates.

(5) The coordinates for these maps are available on the Internet at *http://www.regulations.gov* at Docket No. FWS–R8–ES–2009–0062, at *http://www.fws.gov/sacramento/,* or at the Sacramento Fish and Wildlife Office. Field office location information may be obtained at the Service regional offices, the addresses of which are at 50 CFR 2.2.

(6) The index map of critical habitat units for the Buena Vista Lake shrew (*Sorex ornatus relictus*) in Kern and Kings Counties, California, follows:

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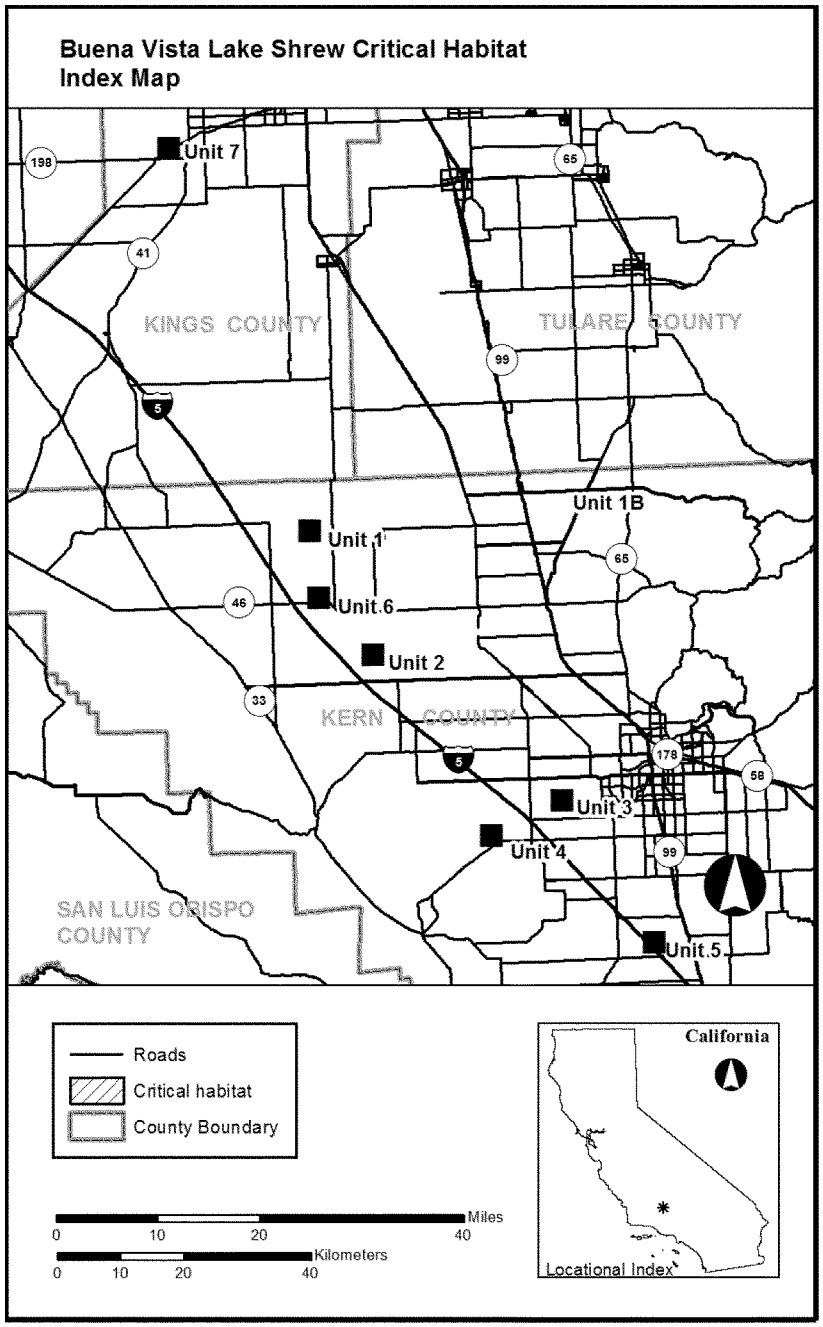
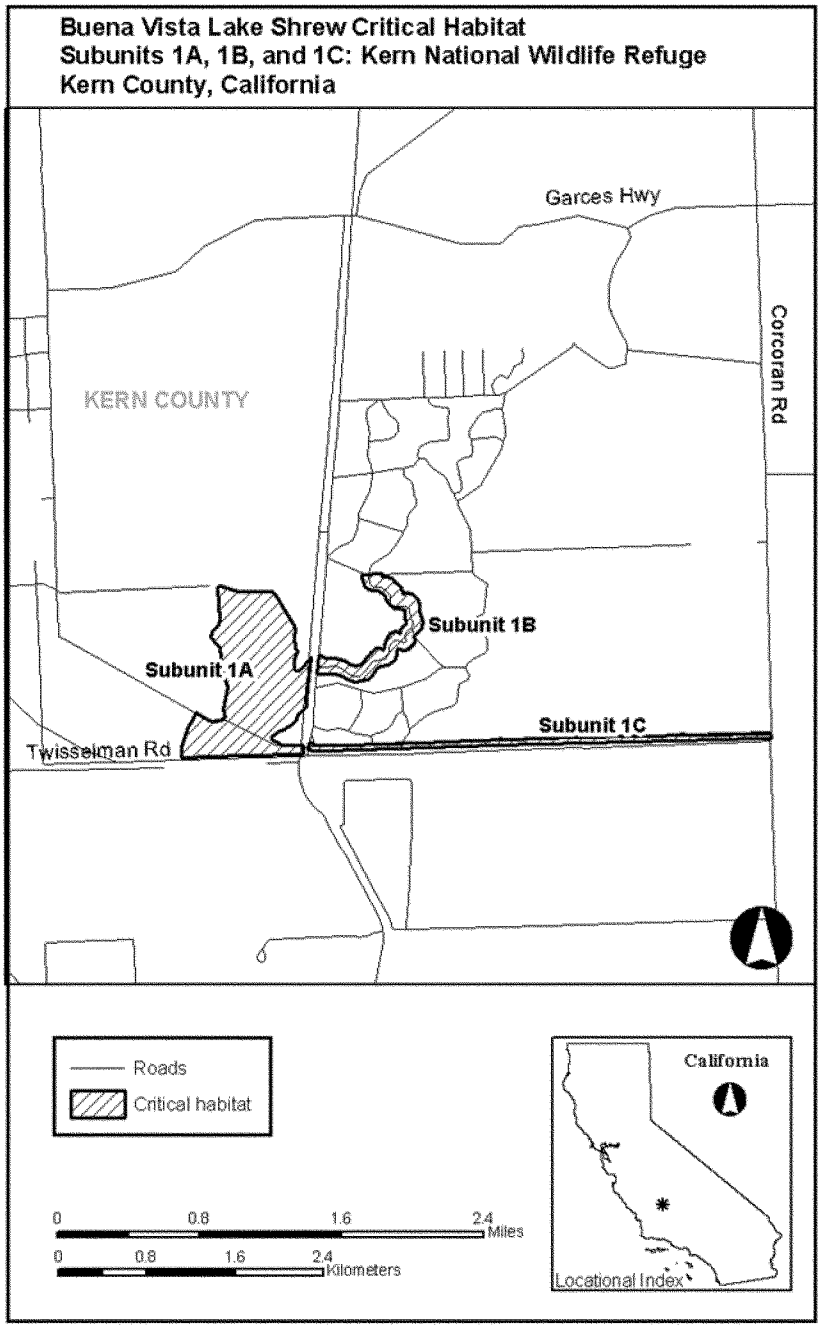


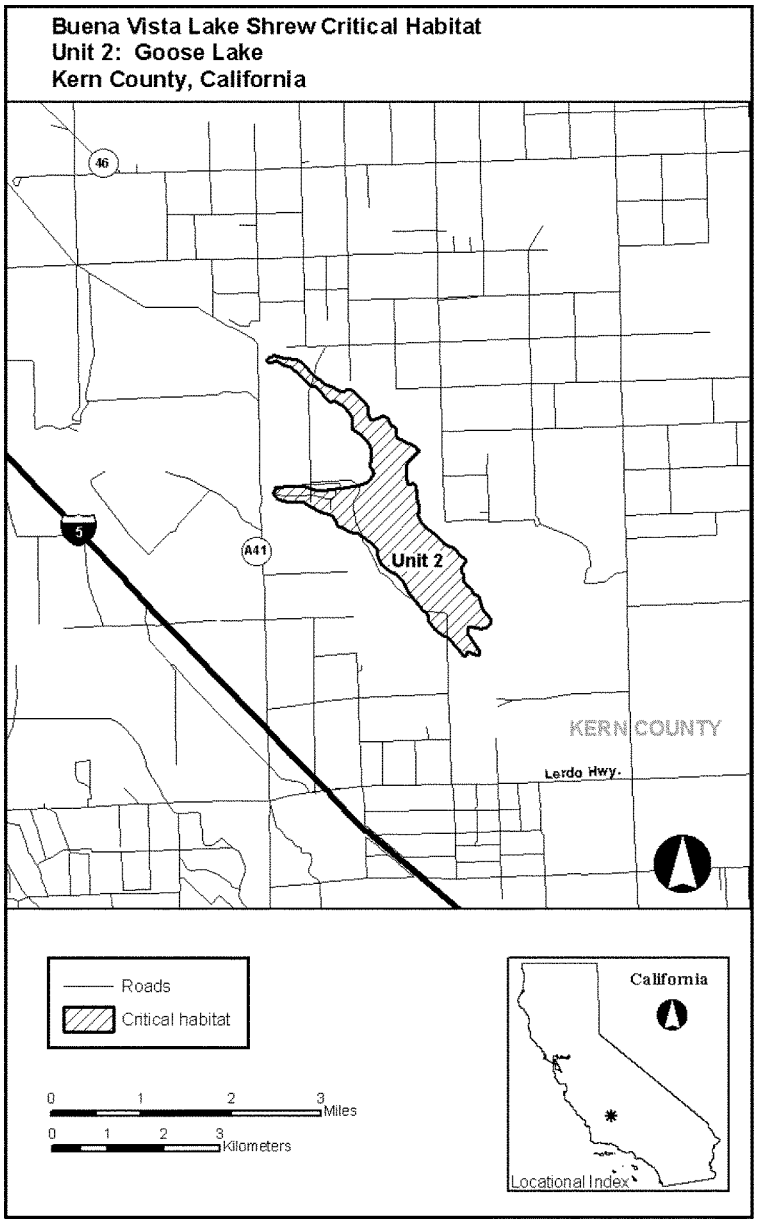
(7) Subunit 1A: Kern National Wildlife Refuge, Kern County, California. Map of Subunits 1A, 1B, and 1C follows:



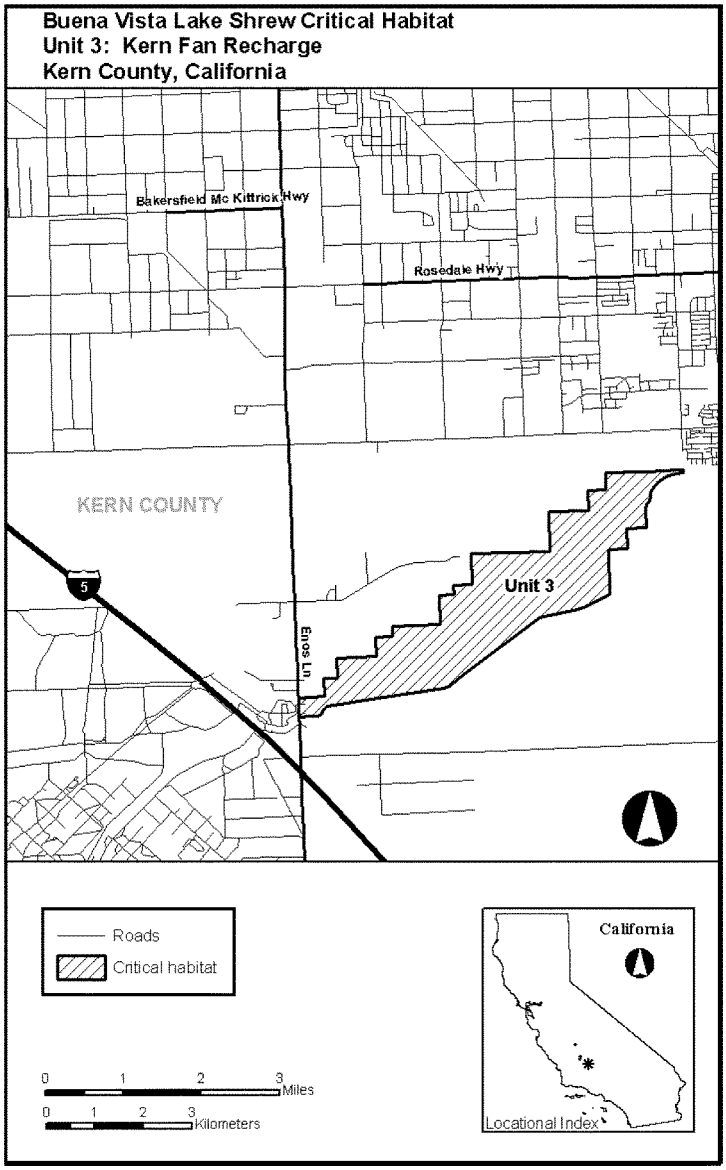
(8) Subunit 1B: Kern National Wildlife Refuge, Kern County, California. Map of Subunits 1A, 1B, and 1C is provided at paragraph (7) of this entry.

(9) Subunit 1C: Kern National Wildlife Refuge, Kern County, California. Map of Subunits 1A, 1B, and 1C is provided at paragraph (7) of this entry.

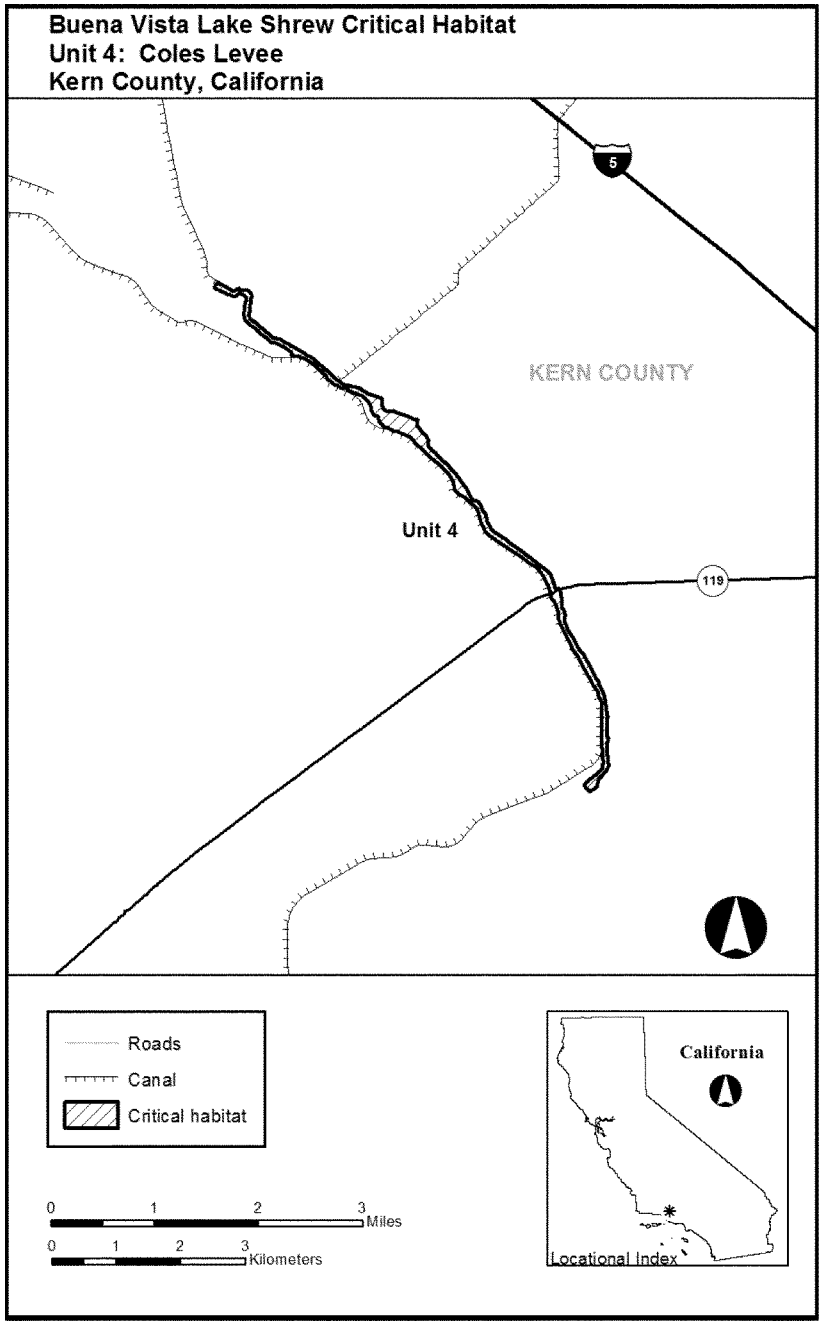
(10) Unit 2: Goose Lake, Kern County, California. Map follows:



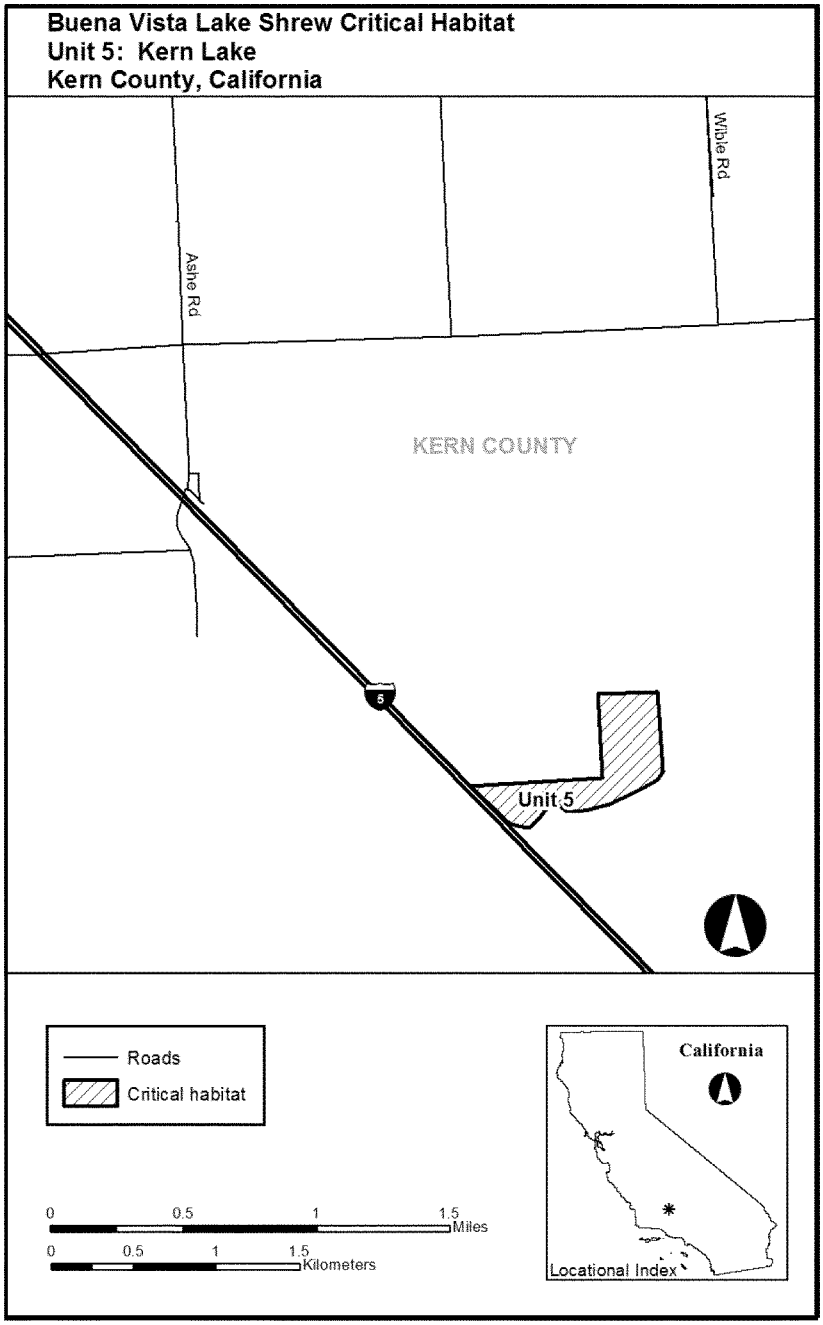
(11) Unit 3: Kern Fan Recharge, Kern County, California. Map follows:



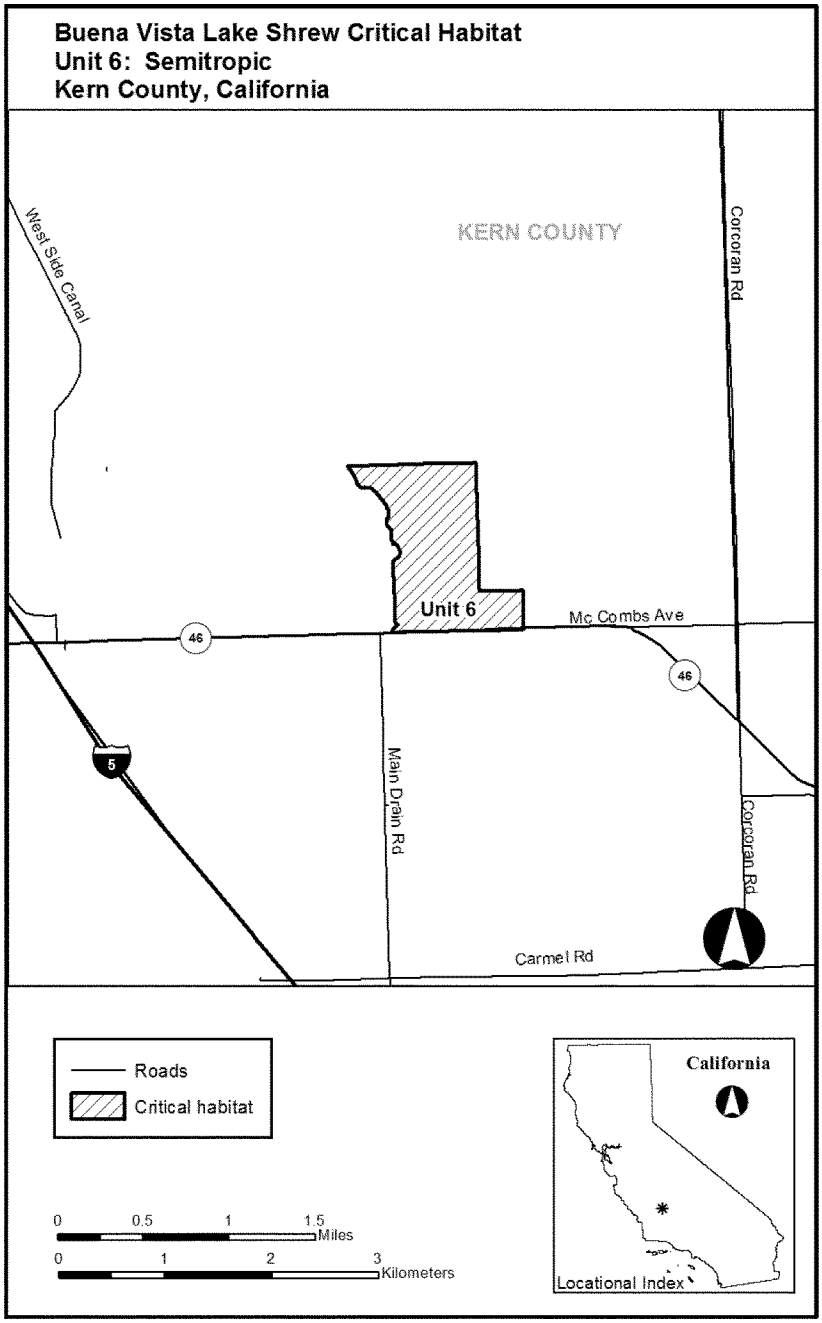
(12) Unit 4: Coles Levee, Kern County, California. Map follows:



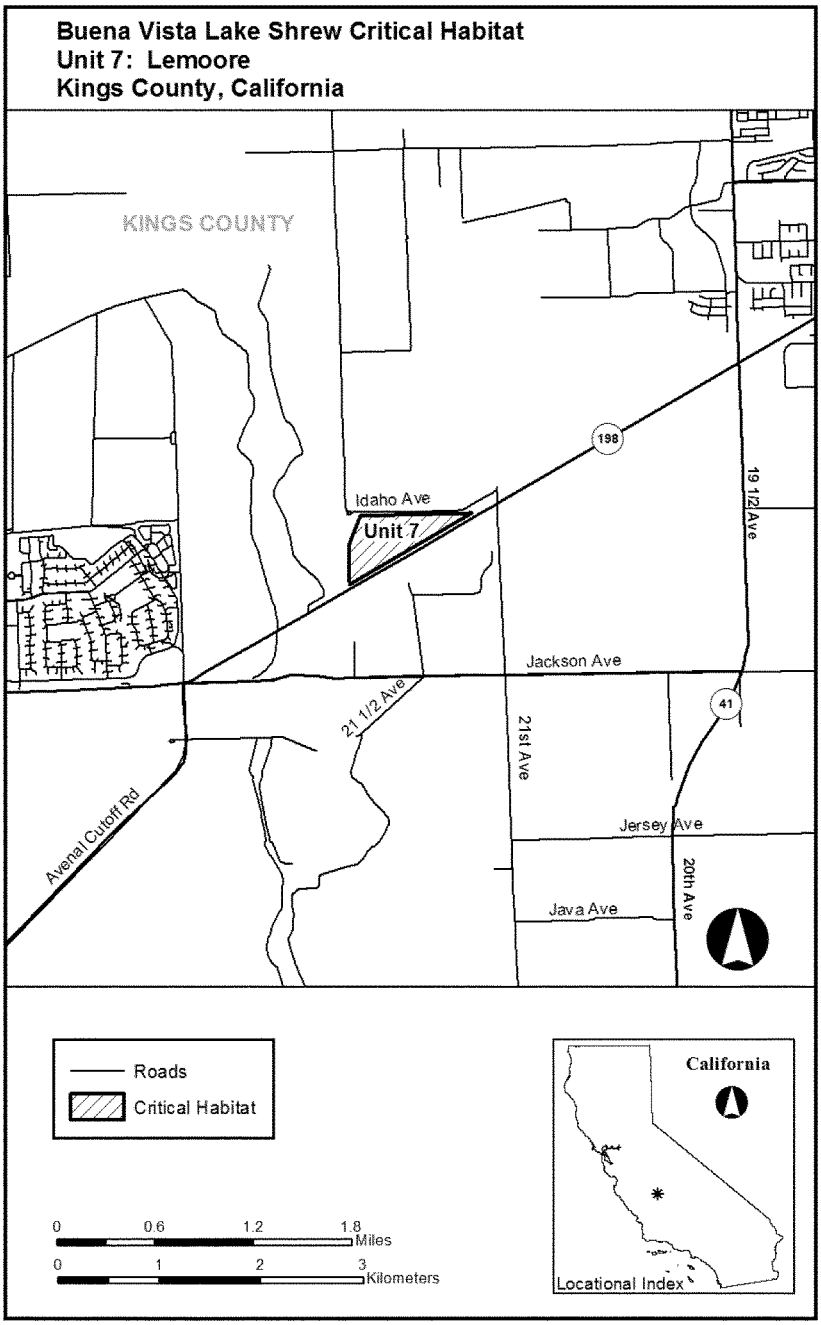
(13) Unit 5: Kern Lake, Kern County, California. Map follows:



(14) Unit 6: Semitropic, Kern County, California. Map follows:



(15) Unit 7: Lemoore, Kings County, California. Map follows:



* * * * *

Dated: February 19, 2013.

Rachel Jacobsen,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2013–04785 Filed 3–4–13; 8:45 am]

BILLING CODE 4310–55–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 130114034–3034–01]

RIN 0648–BC93

Magnuson-Stevens Act Provisions; Fisheries off West Coast States; Pacific Coast Groundfish Fishery; 2013 Tribal Fishery for Pacific Whiting

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule for the 2013 Pacific whiting fishery under the authority of the Pacific Coast Groundfish Fishery Management Plan (FMP), the Magnuson Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and the Pacific Whiting Act of 2006. This proposed rule would establish a formula, specifically [17.5 percent * (U.S. Total Allowable Catch)] plus 16,000 metric tons (mt), for determining the Pacific whiting tribal allocation for 2013 for Pacific Coast Indian tribes that have a Treaty right to harvest groundfish.

DATES: Comments on this proposed rule must be received no later than April 4, 2013.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2013–0013 by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal eRulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA–NMFS–2013–0013;* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* William W. Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070, Attn: Kevin C. Duffy.
- *Fax:* 206–526–6736, Attn: Kevin C. Duffy.

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

FOR FURTHER INFORMATION CONTACT: Kevin C. Duffy (Northwest Region, NMFS), phone: 206–526–4743, fax: 206–526–6736 and email: *kevin.duffy@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

This proposed rule is accessible via the Internet at the Office of the Federal Register Web site at *https://www.federalregister.gov.* Background information and documents are available at the NMFS Northwest Region Web site at *http://www.nwr.noaa.gov/Groundfish/Groundfish-Fishery-Management/Whiting-Management* and at the Pacific Fishery Management Council's Web site at *http://www.pcouncil.org/.*

Background

The regulations at 50 CFR 660.50(d) establish the process by which the tribes with treaty fishing rights in the area covered by the FMP request new allocations or regulations specific to the tribes, in writing, during the biennial harvest specifications and management measures process. The regulations state that ''the Secretary will develop tribal allocations and regulations under this paragraph in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus.'' The procedures NOAA employs in implementing tribal treaty rights under the FMP, in place since May 31, 1996, were designed to provide a framework process by which NOAA Fisheries can accommodate tribal treaty rights by setting aside appropriate amounts of fish in conjunction with the Pacific Fishery Management Council (Council) process for determining harvest specifications and management measures. The Council's groundfish fisheries require a high degree of coordination among the tribal, state, and federal co-managers in order to rebuild overfished species and prevent overfishing, while allowing fishermen opportunities to sustainably harvest over 90 species of groundfish managed under the FMP.

Since 1996, NMFS has been allocating a portion of the U.S. total allowable catch (TAC) (called Optimum Yield (OY) or Annual Catch Limit (ACL) prior to 2012) of Pacific whiting to the tribal fishery, following the process established in 50 CFR 660.50(d). The tribal allocation is subtracted from the U.S. Pacific whiting TAC before allocation to the non-tribal sectors.

To date, only the Makah Tribe has prosecuted a tribal fishery for Pacific whiting. The Makah Tribe has annually harvested a whiting allocation every year since 1996 using midwater trawl gear. Since 1999, the tribal allocation has been made in consideration of their participation in the fishery. In 2008 the Quileute Tribe and Quinault Indian Nation expressed an interest in commencing participation in the whiting fishery. Tribal allocations for 2009–2012 were based on discussions with all three tribes regarding their intent for those fishing years. The table below provides a history of U.S. OYs/ACLs and the annual tribal allocation in metric tons (mt).

Year	U.S. OY	Tribal allocation
2000	232,000 mt	32,500 mt.
2001	190,400 mt	27,500 mt.
2002	129,600 mt	22,680 mt.
2003	148,200 mt	25,000 mt.
2004	250,000 mt	32,500 mt.
2005	269,069 mt	35,000 mt.
2006	269,069 mt	32,500 mt.
2007	242,591 mt	35,000 mt.
2008	269,545 mt	35,000 mt.
2009	135,939 mt	50,000 mt.
2010	193,935 mt	49,939 mt.
2011	290,903 mt	66,908 mt.
2012	186,037 mt TAC [1]	48,556 mt.

[1] Beginning in 2012, the United States started using the term Total Allowable Catch, based on the Agreement between the Government of the United States of America and the Government of Canada on Pacific Hake/Whiting.

In exchanges between NMFS and the tribes during December 2012, and again in January, 2013, the Makah and Quileute tribes indicated their intent to participate in the tribal whiting fishery in 2013. The Quinault Indian Nation indicated that they are not planning to participate in 2013, but reserved the right to participate if circumstances changed. The Hoh tribe has not expressed an interest in participating to date.

Since 2008, NMFS and the co-managers, including the States of Washington and Oregon, as well as the Treaty tribes, have been involved in a process designed to determine the long-term tribal allocation for Pacific whiting. At the September 2008 Council meeting, NOAA, the states and the Quinault, Quileute, and Makah tribes met and agreed on a process in which NOAA would provide to the tribes and states of Washington and Oregon a

summary of the current scientific information regarding whiting, receive comment on the information and possible analyses that might be undertaken, and then prepare analyses of the information to be used by the co-managers (affected tribes, affected states, and NMFS) in developing a tribal allocation for use in 2010 and beyond. The goal was agreement among the co-managers on a long-term tribal allocation for incorporation into the Council's planning process for the 2010 season. An additional purpose was to provide the tribes the time and information to develop an inter-tribal allocation or other necessary management agreement. In 2009, NMFS shared a preliminary report summarizing scientific information available on the migration and distribution of Pacific whiting on the west coast. The co-managers met in 2009 and discussed this preliminary information.

In 2010, NMFS finalized the report summarizing scientific information available on the migration and distribution of Pacific whiting on the West Coast. In addition, NMFS responded in writing to requests from the tribes for clarification on the paper and requests for additional information. NMFS also met with each of the tribes in the fall of 2010 to discuss the report and to discuss a process for negotiation of the long-term tribal allocation of Pacific whiting.

In 2011, NMFS again met individually with the Makah, Quileute, and Quinault tribes to discuss these matters. Due to the detailed nature of the evaluation of the scientific information, and the need to negotiate a long-term tribal allocation following completion of the evaluation, the process continued in 2012 and will not be completed prior to the 2013 Pacific whiting fishery; thus the tribal allocation of whiting for 2013 will not reflect a negotiated long-term tribal allocation. Instead, it is an interim allocation not intended to set precedent for future allocations.

Tribal Allocation for 2013

It is necessary to propose a range for the tribal allocation, rather than a specific allocation amount, because the specific allocation depends on the amount of the coastwide TAC (United States plus Canada) and corresponding U.S. TAC for 2013 (73.88% of the coastwide TAC). The Joint Management Committee (JMC), which was established pursuant to the Agreement between the Government of the United States of America and the Government of Canada on Pacific Hake/Whiting (the Agreement), is anticipated to recommend the coastwide and corresponding U.S./Canada TACs no later than March 25, 2013.

In order for the public to have an understanding of the potential tribal whiting allocation in 2013, NMFS is using the range of U.S. TACs over the last ten years, 2003 through 2012, to project a range of potential tribal allocations for 2013. This range of TACs is 148,200 mt (2003) to 290,903 mt (2011).

As described above, the Makah tribe and Quileute Indian Nation have stated their intent to participate in the Pacific whiting fishery in 2013. The Makah tribe has requested 17.5% of the U.S. TAC, and the Quileute Indian Nation has requested 16,000 mt. Accommodating both requests results in a formula [17.5 percent* (U.S. TAC)] + 16,000 mt for application to the range of TACs. Application of this formula to the range of U.S. TACs over the last ten years results in a tribal allocation of between 41,935 and 66,906 mt for 2013. At the lower end of the range of U.S. TACs, this tribal allocation would represent 28 percent of the U.S. TAC, and at the higher end of the range, this tribal allocation would represent 23 percent of the U.S. TAC. NMFS believes that the current scientific information regarding the distribution and abundance of the coastal Pacific whiting stock suggests that these percentages are within the range of the tribal treaty right to Pacific whiting.

As described earlier, NOAA Fisheries proposes this rule as an interim allocation for the 2013 tribal Pacific whiting fishery. As with past allocations, this proposed rule is not intended to establish any precedent for future whiting seasons or for the long-term tribal allocation of whiting.

The rule would be implemented under authority of Section 305(d) of the Magnuson-Stevens Act, which gives the Secretary responsibility to ''carry out any fishery management plan or amendment approved or prepared by him, in accordance with the provisions of this Act.'' With this proposed rule, NMFS, acting on behalf of the Secretary, would ensure that the FMP is implemented in a manner consistent with treaty rights of four Northwest tribes to fish in their ''usual and accustomed grounds and stations'' in common with non-tribal citizens. *United States* v. *Washington,* 384 F. Supp. 313 (W.D. 1974).

Classification

NMFS has preliminarily determined that the management measures for the 2013 Pacific whiting tribal fishery are consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. In making the final determination, NMFS will take into account the data, views, and comments received during the comment period.

The Office of Management and Budget has determined that this proposed rule is not significant for purposes of Executive Order 12866.

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A summary of the analysis follows. A copy of this analysis is available from NMFS and is published on the NMFS Web site under Groundfish Management (see **ADDRESSES**).

Under the RFA, the term ''small entities'' includes small businesses, small organizations, and small governmental jurisdictions. The Small Business Administration has established size criteria for all different industry sectors in the U.S., including fish harvesting and fish processing businesses. A business involved in fish harvesting is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates) and if it has combined annual receipts less than $4.0 million for all its affiliated operations worldwide. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 500 or fewer persons at all its affiliated operations worldwide. A business involved in both the harvesting and processing of seafood products is a small business if it meets the $4.0 million criterion for fish harvesting operations. A wholesale business servicing the fishing industry is a small business if it employs 100 or fewer persons at all its affiliated operations worldwide. For marinas and charter/party boats, a small business is a business with annual receipts less than $7.0 million. For nonprofit organizations, the RFA defines a small organization as any nonprofit enterprise that is independently owned and operated and is not dominant in its field. The RFA defines small governmental jurisdictions as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of less than 50,000.

For the years 2007 to 2011, the total whiting fishery (tribal and non-tribal) has averaged harvests of 199,000 mt annually, worth $37 million in terms of ex-vessel revenues. As the U.S. OY/ACL has been highly variable during this time, so have harvests. During this

period, harvests have ranged from 122,000 mt (2009) to 248,000 mt (2008). In 2011, the harvest was approximately 231,000 mt. Ex-vessel revenues have also varied. Annual ex-vessel revenues have ranged from $16 million (2009) to $58 million (2008). Ex-vessel revenues in 2011 were about $53 million.

The prices for whiting are largely determined by the world market for groundfish, because most of the whiting harvested is exported. Average ex-vessel price for trawl harvested whiting in 2011 was $230 per mt. For 2012, average ex-vessel prices increased to $309 per mt, leading to $49 million in ex-vessel revenues based on total harvests of about 160,000 mt. Note that the use of ex-vessel values does not take into account the wholesale or export value of the fishery or the costs of harvesting and processing whiting into a finished product. NMFS does not have sufficient information to make a complete assessment of these values.

The Pacific whiting fishery harvests almost exclusively Pacific whiting. While bycatch of other species occurs, the fishery is constrained by bycatch limits on key overfished species. This is a high-volume fishery with low ex-vessel prices per pound. This fishery also has seasonal aspects based on the distribution of whiting off the west coast.

Since 1996, there has been a tribal allocation of the U.S. whiting TAC. There are four tribes associated with the whiting fishery: Hoh, Makah, Quileute, and Quinault.

This rule would establish the formula for determining 2013 interim tribal allocation. The alternatives are ''No-Action'' vs. the ''Proposed Action.'' The proposed allocation, based on discussions with the tribes, is for NMFS to allocate between 28 percent and 23 percent of the U.S. total allowable catch for 2013. NMFS did not consider a broader range of alternatives to the proposed allocation. The tribal allocation is based primarily on the requests of the tribes. These requests reflect the level of participation in the fishery that will allow them to exercise their treaty right to fish for whiting. Consideration of amounts lower than the tribal requests is not appropriate in this instance. As a matter of policy, NMFS has historically supported the harvest levels requested by the tribes. Based on the information available to NMFS, the tribal request is within their tribal treaty rights, and the participating tribe has on occasion shown an ability to harvest the amount of whiting requested. A higher allocation would, arguably, also be within the scope of the treaty right. However, a higher allocation would unnecessarily limit the non-tribal fishery. A no-action alternative was considered, but the regulatory framework provides for a tribal allocation on an annual basis only. Therefore, no action would result in no allocation of Pacific whiting to the tribal sector in 2013, which would be inconsistent with NMFS' responsibility to manage the fishery consistent with the tribes' treaty rights. Given that there are tribal requests for allocations in 2013, this alternative received no further consideration.

This proposed rule would affect how whiting is allocated to the following sectors/programs: Tribal, Shorebased Individual Fishing Quota (IFQ) Program—Trawl Fishery, Mothership Coop (MS) Program—Whiting At-sea Trawl Fishery, and Catcher-Processor (C/P) Coop Program—Whiting At-sea Trawl Fishery. The amount of whiting allocated to these sectors is based on the U.S. TAC. From the U.S. TAC, small amounts of whiting that account for research catch and for bycatch in other fisheries are deducted. The amount of the tribal allocation is also deducted directly from the TAC. After accounting for these deductions, the remainder is the commercial harvest guideline. This guideline is then allocated among the other three sectors as follows: 34 percent for the C/P Coop Program; 24 percent for the MS Coop Program; and 42 percent for the Shorebased IFQ Program.

The shorebased IFQ fishery is managed with individual fishing quotas for most groundfish species, including whiting. Annually quota pounds (QP) are allocated from the shorebased sector allocation based on the individual quota shares (QS) of each QS owner. (QP is expressed as a weight and QS is expressed as a percent of the shorebased allocation for a given species or species group.) QP may be transferred from a QS account to a vessel account or from one vessel account to another vessel account. Vessel accounts are used to track how QP is harvested (landings and discards) by limited entry trawl vessels of all IFQ species/species groups. Shorebased IFQ catch must be landed at authorized first receiver sites.

The IFQ whiting quota shares (QS) were allocated to a mixture of limited entry permit holders and shorebased processors. One non-profit organization received quota share based on the ownership of multiple limited entry permits. The MS coop sector can consist of one or more coops and a non-coop subsector. For a MS coop to participate in the Pacific whiting fishery, it must be composed of MS catcher-vessel (MS/CV) endorsed limited entry permit owners. Each permitted MS coop is authorized to harvest a quantity of Pacific whiting based on the sum of the catch history assignments for each member's MS/CV-endorsed permit identified in the NMFS-accepted coop agreement for a given calendar year. Each MS/CV endorsed permit has an allocation of Pacific whiting catch based on its catch history in the fishery. The catch history assignment (CHA) is expressed as a percentage of Pacific whiting of the total MS sector allocation. Currently the MS sector is composed of only a single coop. (Shorebased IFQ QS and MS sector CHA are not scheduled to begin trading until 2014, pending resolution of the *Pacific Dawn* v *Bryson* litigation where the rules used to allocate whiting QS and CHA are being challenged.)

The C/P coop program is a limited access program that applies to vessels in the C/P sector of the Pacific whiting at-sea trawl fishery and is a single voluntary coop. Unlike the MS coop regulations, where multiple coops can be formed around the catch history assignments of each coop's member's endorsed permit, the single C/P coop receives the total Pacific whiting allocation for the catcher/processor sector. Only C/P endorsed limited entry permits can participate in this coop. Currently, the shorebased IFQ Program is composed of 138 QS permits/accounts, 142 vessel accounts, and 50 first receivers. The mothership coop fishery is currently composed of a single coop, with six mothership processor permits, and 36 MS/CV endorsed permits, with one permit having two catch history assignments endorsed to it. The C/P coop is composed of 10 catcher-processor permits owned by three companies. There are four tribes that can participate in the tribal whiting fishery. The current tribal fleet is composed of 5 trawlers that either deliver to a shoreside plant or to a contracted mothership.

Participants in the whiting fishery include fish harvesting companies, fish processing companies, companies involved in both harvesting and processing of seafood products such as catcher-processors, organizations, and governmental jurisdictions.

These regulations directly affect IFQ Quota share holders who determine which vessel accounts receive QP, holders of mothership catcher-vessel-endorsed permits who determine how many co-ops will participate in the fishery and how much fish each co-op is to receive, and the catcher-processor co-op which is made up of three companies that own the catcher-processor permits. As part of the permit application processes for the non-tribal

fisheries, based on a review of the SBA size criteria, applicants are asked if they considered themselves a ''small'' business, and they are asked to provide detailed ownership information. Although there are three non-tribal sectors, many companies participate in two or more of these sectors. All mothership catcher-vessel participants participate in the shorebased IFQ sector, while two of the three catcher-processor companies also participate in both the shorebased IFQ sector and in the MS sector. Many companies own several QS accounts. After accounting for cross participation, multiple QS account holders, and for affiliation through ownership, there are 100 non-tribal entities directly affected by these proposed regulations, 82 of which are considered to be ''small'' businesses. These regulations also directly affect tribal whiting fisheries. Based on groundfish ex-vessel revenues and on tribal enrollments (the population size of each tribe), the four tribes and their fleets are considered ''small'' entities.

This rule will allocate fish between tribal harvesters (harvest vessels are small entities, tribes are small jurisdictions) and non-tribal harvesters (a mixture of small and large businesses). Tribal fisheries undertake a mixture of fishing activities that are similar to the activities that non-tribal fisheries undertake. Tribal harvests are delivered to both shoreside plants and motherships for processing. These processing facilities also process fish harvested by non-tribal fisheries. The effect of the tribal allocation on non-tribal fisheries will depend on the level of tribal harvests relative to their allocation and the reapportioning process. If the tribes do not harvest their entire allocation, there are opportunities during the year to reapportion unharvested tribal amounts to the non-tribal fleets. For example, last year, NMFS did such a reapportionment. On, October 4, 2012, NMFS announced: ''The best available information on October 2, 2012 indicates that at least 28,000 mt of the tribal allocation of 48,556 mt for the 2012 tribal Pacific whiting fishery will not be used by December 31, 2012. Recent conversations with tribal fishery managers indicate that reapportioning 28,000 mt, leaving a tribal allocation of 20,556 mt, will not limit tribal harvest opportunities for the remainder of year. Tribal harvests to date amount to less than 1,000 mt. In addition, the Quileute Tribe has not entered the fishery to date. Even if the Quileute Tribe enters the fishery, the remaining tribal allocation following reapportionment will allow for their participation.'' This reapportioning process allows unharvested tribal allocations of whiting to be fished by the non-tribal fleets, benefitting both large and small entities. See **ADDRESSES**.

NMFS believes this proposed rule would not adversely affect small entities. Nonetheless, NMFS has prepared this IRFA and is requesting comments on this conclusion.

There are no reporting, recordkeeping or other compliance requirements in the proposed rule.

No Federal rules have been identified that duplicate, overlap, or conflict with this action.

NMFS issued Biological Opinions under the ESA on August 10, 1990, November 26, 1991, August 28, 1992, September 27, 1993, May 14, 1996, and December 15, 1999 pertaining to the effects of the Pacific Coast groundfish FMP fisheries on Chinook salmon (Puget Sound, Snake River spring/summer, Snake River fall, upper Columbia River spring, lower Columbia River, upper Willamette River, Sacramento River winter, Central Valley spring, California coastal), coho salmon (Central California coastal, southern Oregon/northern California coastal), chum salmon (Hood Canal summer, Columbia River), sockeye salmon (Snake River, Ozette Lake), and steelhead (upper, middle and lower Columbia River, Snake River Basin, upper Willamette River, central California coast, California Central Valley, south/central California, northern California, southern California). These biological opinions have concluded that implementation of the FMP for the Pacific Coast groundfish fishery was not expected to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS, or result in the destruction or adverse modification of critical habitat.

NMFS issued a Supplemental Biological Opinion on March 11, 2006 concluding that neither the higher observed bycatch of Chinook in the 2005 whiting fishery nor new data regarding salmon bycatch in the groundfish bottom trawl fishery required a reconsideration of its prior ''no jeopardy'' conclusion. NMFS also reaffirmed its prior determination that implementation of the Groundfish PCGFMP is not likely to jeopardize the continued existence of any of the affected ESUs. Lower Columbia River coho (70 FR 37160, June 28, 2005) and Oregon Coastal coho (73 FR 7816, February 11, 2008) were recently relisted as threatened under the ESA. The 1999 biological opinion concluded that the bycatch of salmonids in the Pacific whiting fishery were almost entirely Chinook salmon, with little or no bycatch of coho, chum, sockeye, and steelhead.

On December 7, 2012, NMFS completed a biological opinion concluding that the groundfish fishery is not likely to jeopardize non-salmonid marine species including listed eulachon, green sturgeon, humpback whales, Steller sea lions, and leatherback sea turtles. The opinion also concludes that the fishery is not likely to adversely modify critical habitat for green sturgeon and leatherback sea turtles. An analysis included in the same document as the opinion concludes that the fishery is not likely to adversely affect green sea turtles, olive ridley sea turtles, loggerhead sea turtles, sei whales, North Pacific right whales, blue whales, fin whales, sperm whales, Southern Resident killer whales, Guadalupe fur seals, or the critical habitat for Steller sea lions.

As Steller sea lions and humpback whales are also protected under the Marine Mammal Protection Act (MMPA), incidental take of these species from the groundfish fishery must be addressed under MMPA section 101(a)(5)(E). On February 27, 2012, NMFS published notice that the incidental taking of Steller sea lions in the West Coast groundfish fisheries is addressed in NMFS' December 29, 2010 Negligible Impact Determination (NID) and this fishery has been added to the list of fisheries authorized to take Steller sea lions (77 FR 11493). NMFS is currently developing MMPA authorization for the incidental take of humpback whales in the fishery.

On November 21, 2012, the U.S. Fish and Wildlife Service (FWS) issued a biological opinion concluding that the groundfish fishery will not jeopardize the continued existence of the short-tailed albatross. The FWS also concurred that the fishery is not likely to adversely affect the marbled murrelet, California least tern, southern sea otter, bull trout, nor bull trout critical habitat.

Pursuant to Executive Order 13175, this proposed rule was developed after meaningful consultation and collaboration with tribal officials from the area covered by the FMP. Consistent with the Magnuson-Stevens Act at 16 U.S.C. 1852(b)(5), one of the voting members of the Pacific Council is a representative of an Indian tribe with federally recognized fishing rights from the area of the Council's jurisdiction. In addition, NMFS has coordinated specifically with the tribes interested in the whiting fishery regarding the issues addressed by this rule.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Indian fisheries.

Dated: February 27, 2013.

Alan D. Risenhoover,

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

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be 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.* and 16 U.S.C. 773 *et seq.*

■ 2. In § 660.50, paragraph (f)(4) is revised to read as follows:

§ 660.50 Pacific Coast treaty Indian fisheries.

* * * * *

(f) * * *

(4) *Pacific whiting.* The tribal allocation for 2013 will be 17.5 percent of the U.S. TAC plus 16,000 mt.

* * * * *

[FR Doc. 2013–04922 Filed 3–4–13; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 78, No. 43

Tuesday, March 5, 2013

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 27, 2013.

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, Washington, DC; *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602.

Comments regarding these information collections are best assured of having their full effect if received by April 4, 2013. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Marketing Service

Title: Mandatory Country of Origin Labeling of All Covered Commodities.

OMB Control Number: 0581–0250.

Summary of Collection: The 2002 (Pub. L. 107–171) and 2008 (Pub. L. 110–234) Farm Bills amended the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627) to require retailers to notify their customers of the country of origin of muscle cuts and ground beef (including veal), lamb, pork, chicken, and goat; wild and farm-raised fish and shellfish; perishable agricultural commodities; peanuts, pecans, and macadamia nuts; and ginseng. Individuals who supply covered commodities, whether directly to retailers or indirectly through other participants in the marketing chain, are required to establish and maintain country of origin and, if applicable, method of production information for the covered commodities and supply this information to retailers.

Need and Use of the Information: Producers, handlers, manufacturers, wholesalers, importers, and retailers of covered commodities are affected. This public reporting burden is necessary to ensure accuracy of country of origin and method of production declarations relied upon at the point of sale at retail. The public reporting burden also assures that all parties involved in supplying covered commodities to retail stores maintain and convey accurate information as required.

Description of Respondents: Business or other for-profit.

Number of Respondents: 1,384,833.

Frequency of Responses: Recordkeeping.

Total Burden Hours: 31,437,002.

Agricultural Marketing Service

Title: Farmers Market Directory and Survey.

OMB Control Number: 0581–0169.

Summary of Collection: The primary legislative basis for conducting farmer's market research is the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627). In addition, the Farmer-to-Consumer Direct Marketing Act of 1976 supports USDA's work to enhance the effectiveness of direct marketing, such as the development of modern farmers markets. The Marketing Services Division (MSD), Agricultural Marketing Service (AMS) identifies marketing opportunities, provides analysis to help take advantage of those opportunities and develops and evaluates solutions including improving farmers markets and other direct-to-consumer marketing activities. Markets are maintained by State Departments of Agriculture, local public authorities, grower organizations and non-profit organizations.

Need and Use of the Information: MSD/AMS is combining the National Farmers Market Managers Survey with the annual update of the USDA National Farmers Market Directory, thereby reducing the number of times that it seeks to make contact with market managers. The information will be collected using the form TM–6 ''Farmers' Market Directory and Survey.'' These markets represent a varied range of sizes, geographical locations, types, ownership, and structure. These markets will provide a valid overview of farmers markets in the United States. Information such as the size of markets, operating times and days, retail and wholesale sales, management structure, and rules and regulations governing the markets are all important questions that need to be answered in the design of a new market. The information developed by this survey will support better designs, development techniques, and operating methods for modern farmers markets and outline improvements that can be applied to revitalize existing markets.

Description of Respondents: Not-for-profit institutions, Federal Government, State, Local or Tribal Government.

Number of Respondents: 7,865.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 833.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2013–04943 Filed 3–4–13; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 27, 2013.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by April 4, 2013 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725—17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Farm Service Agency

Title: Agricultural Foreign Investment Disclosure Act Report.

OMB Control Number: 0560–0097.

Summary Of Collection: The Agricultural Foreign Investment Disclosure Act of 1978 (AFIDA) requires foreign investors to report in a timely manner all held, acquired, or transferred U.S. agricultural land under penalty of law to Farm Service Agency (FSA).. Authority for the collection of the information was delegated by the Secretary of Agriculture to the Farm Service Agency (FSA). The statute of authority is 92 STAT (1263–1267) or 7 U.S.C. 3501–3508 or Public Law 95–460. Foreign investors may obtain form FSA–153, AFIDA Report, from their local FSA county office or from the FSA Internet site.

Need and Use of the Information: The information collected from the AFIDA Reports is used to monitor the effect of foreign investment upon family farms and rural communities and in the preparation of a voluntary report to Congress and the President. Congress reviews the report and decides if regulatory action is necessary to limit the amount of foreign investment in U.S. agricultural land. If this information was not collected, USDA could not effectively monitor foreign investment and the impact of such holdings upon family farms and rural communities.

Description of Respondents: Business or other for-profit; Individuals or households; Farms.

Number of Respondents: 5,525.

Frequency of Responses: Reporting: On occasion; Annually.

Total Burden Hours: 2,631.

Farm Service Agency

Title: Servicing Minor Program Loans.

OMB Control Number: 0560–0230.

Summary of Collection: Regulations are promulgated to implement selected provisions of sections 331 and 335 of the Consolidated Farm and Rural Development Act. Section 331 authorizes the Secretary of Agriculture to grant releases from personal liability where security property is transferred to approve applicants who, under agreement, assume the outstanding secured indebtedness. Section 335 provides servicing authority for real estate security; operation or lease of realty, disposition of surplus property; conveyance of complete interest of the United States; easements; and condemnations. The information is collected from Farm Service Agency (FSA) Minor Program borrowers who may be individual farmers or farming partnerships, associations, or corporations.

Need and Use of the Information: FSA will collect information related to a program benefit recipient or loan borrower requesting action on security they own, which was purchased with FSA loan funds, improved with FSA loan funds or has otherwise been mortgaged to FSA to secure a Government loan. The information collected is primarily financial data, such as borrower's asset values, current financial information and public use and employment data. Failure to obtain this information at the time of the request for servicing will result in rejection of the borrower's request.

Description of Respondents: Farms; Individuals or households; Business or other-for-profit; Not-for-profit institutions; State. Local and Tribal Government.

Number of Respondents: 58.

Frequency of Responses: Reporting: On occasion; Annually.

Total Burden Hours: 37.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2013–04942 Filed 3–4–13; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 27, 2013.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by April 4, 2013 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725—17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–

7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal & Plant Health Inspection Service

Title: Importation of Products of Poultry and Birds.

OMB Control Number: 0579–0141.

Summary of Collection: The Animal Health protection Act (AHPA) of 2002 is the primary Federal law governing the protection of the health of animals under the Animal & Plant Health Inspection Service (APHIS) regulatory authority. The law gives the Secretary of Agriculture broad authority to detect, control, or eradicate pests or diseases of livestock or poultry. The AHPA is contained in Title X, Subtitle E, and Sections 10401–18 of Public Law 107–171, dated may 13, 2002, and the Farm Security and Rural Investment Act of 2002. The regulations under which disease prevention activities are contained are in Title 9, Chapter 1, Subchapter D, and Parts 91 through 99 of the Code of Federal Regulations. The purpose of these regulations is to allow poultry meat that originates in the United States to be shipped, for processing purposes, to a region where exotic Newcastle disease exists, and then returned to the United States. The process entails the use of four information collection activities in the form of a certificate of origin that must be issued, including serial numbers that must be recorded, records that must be maintained, and cooperative service agreements that must be signed and an a certificates for shipment back to the United States.

Need and Use of the Information: APHIS will collect information to ensure that imported poultry carcasses pose a negligible risk of introducing END into the United States. If the information is not collected, it would significantly cripple APHIS' ability to ensure that poultry carcasses imported from regions affected with END pose a negligible risk of introducing this disease into the United States.

This would make a disease incursion event much more likely, with potentially devastating effects on the U.S. poultry industry.

Description of Respondents: Business or other for-profit; Federal Government.

Number of Respondents: 4.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 129.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2013–04941 Filed 3–4–13; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

International Trade Administration

DEPARTMENT OF THE INTERIOR

Allocation of Duty-Exemptions for Calendar Year 2013 for Watch Producers Located in the United States Virgin Islands

AGENCY: Import Administration, International Trade Administration, Department of Commerce; Office of Insular Affairs, Department of the Interior.

ACTION: Notice.

SUMMARY: This action allocates calendar year 2013 duty exemptions for watch assembly producers (''program producers'') located in the United States Virgin Islands (''USVI'') pursuant to Public Law 97–446, as amended by Public Law 103–465, Public Law106–36 and Public Law 108–429 (''the Act'').

FOR FURTHER INFORMATION CONTACT: Supriya Kumar, Subsidies Enforcement Office; phone number: (202) 482–3530; fax number: (202) 501–7952; and email address: *Supriya.Kumar@trade.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Act, the Departments of the Interior and Commerce (''the Departments'') share responsibility for the allocation of duty exemptions among program producers in the United States insular possessions and the Northern Mariana Islands. In accordance with Section 303.3(a) of the regulations (15 CFR 303.3(a)), the total quantity of duty-free insular watches and watch movements for calendar year 2013 is 1,866,000 units for the USVI. This amount was established in *Changes in Watch, Watch Movement and Jewelry Program for the U.S. Insular Possessions,* 65 FR 8048 (February 17, 2000). There are currently no program producers in Guam, American Samoa or the Northern Mariana Islands.

The criteria for the calculation of the calendar year 2013 duty-exemption allocations among program producers within a particular territory are set forth in Section 303.14 of the regulations (15 CFR 303.14). The Departments have verified and, where appropriate, adjusted the data submitted in application form ITA–334P by USVI program producers and have inspected these producers' operations in accordance with Section 303.5 of the regulations (15 CFR 303.5).

In calendar year 2012, USVI program producers shipped 53,347 watches and watch movements into the customs territory of the United States under the Act. The dollar amount of corporate income taxes paid by USVI program producers during calendar year 2012, and the creditable wages and benefits paid by these producers during calendar year 2012 to residents of the territory was a combined total of $1,105,504. The calendar year 2013 USVI annual duty exemption allocations, based on the data verified by the Departments, are as follows:

Program producer	Annual allocation
Belair Quartz, Inc	500,000

The balance of the units allocated to the USVI is available for new entrants into the program or existing program producers who request a supplement to their allocation.

Dated: February 27, 2013.

Gregory W. Campbell,

Acting Director, Office of Policy, Import Administration, International Trade Administration, Department of Commerce.

Dated: February 27, 2013.

Nikolao Pula,

Director of Office of Insular Affairs, Department of the Interior.

[FR Doc. 2013–05063 Filed 3–4–13; 8:45 am]

BILLING CODE 3510–DS–P; 4310–93–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–837]

Polyethylene Terephthalate Film, Sheet, and Strip From Taiwan: Notice of Correction to the Final Results of the 2010–2011 Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* March 5, 2013.

FOR FURTHER INFORMATION CONTACT: Sean Carey or Milton Koch, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of

Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 428–3964 or (202) 482–2584, respectively.

SUPPLEMENTARY INFORMATION:

Correction

On February 11, 2013, the Department of Commerce (''Department'') published, in the **Federal Register**, the final results of the 2010–2011 administrative review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip (PET Film) from Taiwan.[1] The period of review covered July 1, 2010, through June 30, 2011. The published **Federal Register** notice contained a clerical error, in that it identified an incorrect case number associated with PET Film from Taiwan (*i.e.,* incorrect case number A–533–824).[2] The correct case number associated with PET Film from Taiwan is A–583–837. Pursuant to section 751(h) of the Tariff Act of 1930, as amended (''the Act''), the Department shall correct any ministerial errors within a reasonable time after the determinations are issued under this section. A ministerial error is defined as an error ''in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error.'' This notice serves to correct the incorrect case number listed in the *Final Results.*

This correction is published in accordance with sections 751(h) and 777(i) of the Act.

Dated: February 26, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2013–05041 Filed 3–4–13; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Polyethylene Terephthalate Film, Sheet, and Strip From Taiwan: Final Results of Antidumping Duty Administrative Review; 2010–2011,* 78 FR 9668 (February 11, 2013) (*Final Results*).

[2] *Id.* 78 FR at 9668.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–912]

Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Review; 2011–2012

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* March 5, 2013.

SUMMARY: The Department of Commerce (''the Department'') is conducting a new shipper review of the antidumping duty order on certain new pneumatic off-the-road tires (''OTR tires'') from the People's Republic of China (''PRC''). The period of review (''POR'') is September 1, 2011, through February 29, 2012. The review covers a single entry of subject merchandise exported by Trelleborg Wheel Systems (Xingtai) China, Co. Ltd. (''Trelleborg Wheel Systems China'') and imported by its U.S. affiliate, Trelleborg Wheel Systems Americas. We have preliminarily found that Trelleborg Wheel Systems China did not make a sale of subject merchandise at less than normal value.

FOR FURTHER INFORMATION CONTACT: Raquel Silva or Eugene Degnan or, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6475 or (202) 482–0414, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The merchandise covered by this order includes new pneumatic tires designed for off-the-road and off-highway use, subject to certain exceptions.[1] The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings: 4011.20.10.25, 4011.20.10.35, 4011.20.50.30, 4011.20.50.50, 4011.61.00.00, 4011.62.00.00, 4011.63.00.00, 4011.69.00.00, 4011.92.00.00, 4011.93.40.00, 4011.93.80.00, 4011.94.40.00, and 4011.94.80.00. The HTSUS subheadings are provided for convenience and customs purposes only; the written product description of the scope of the order is dispositive.[2]

Methodology

The Department has conducted this review in accordance with sections 751(a)(1)(B) and 751(a)(2)(B) of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.214. Constructed export prices have been calculated in accordance with section 772 of the Act. Because the PRC is a nonmarket economy within the meaning of section 771(18) of the Act, normal value has been calculated in accordance with section 773(c) of the Act. Specifically, the respondent's factors of production have been valued in Indonesia, which is economically comparable to the PRC and is a significant producer of comparable merchandise.

For a full description of the methodology underlying our conclusions, please see the Preliminary Decision Memorandum, which is hereby adopted by this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the internet at *http://www.trade.gov/ia/*. The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of New Shipper Review

The Department preliminarily finds that the following weighted-average dumping margin exists:

Exporter	Weighted-average dumping margin
Trelleborg Wheel Systems (Xingtai) China, Co. Ltd.	0.0%

Disclosure and Public Comment

The Department will 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). Interested parties may submit written comments no later than 30 days after the date of publication of these preliminary results of review.[3] Rebuttals to written comments may be filed no later than five days after the written comments are filed.[4]

Any interested party may request a hearing within 30 days of publication of this notice.[5] Hearing requests should contain the following information: (1)

[1] *See* a complete description of the Scope of the Order in the memorandum to Paul Piquado entitled ''Decision Memorandum for Preliminary Results of Antidumping Duty New Shipper Review Pertaining to Trelleborg Wheel Systems (Xingtai) China, Co. Ltd.: Certain New Pneumatic Off-the-Road Tires from the People's Republic of China,'' dated February 26, 2013 (''Preliminary Decision Memorandum'').

[2] *See Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Notice of Amended Final Affirmative Determination of Sales at Less Than Fair Value and Antidumping Duty Order,* 73 FR 51624 (September 4, 2008).

[3] *See* 19 CFR 351.309(c).

[4] *See* 19 CFR 351.309(d).

[5] *See* 19 CFR 351.310(c).

The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.[6]

The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Deadline for Submission of Publicly Available Surrogate Value Information

In accordance with 19 CFR 351.301(c)(3)(ii), the deadline for submission of publicly available information to value factors of production under 19 CFR 351.408(c) is 20 days after the date of publication of the preliminary results. In accordance with 19 CFR 351.301(c)(1), if an interested party submits factual information less than ten days before, on, or after (if the Department has extended the deadline), the applicable deadline for submission of such factual information, an interested party may submit factual information to rebut, clarify, or correct the factual information no later than ten days after such factual information is served on the interested party. However, the Department generally will not accept in the rebuttal submission additional or alternative surrogate value information not previously on the record, if the deadline for submission of surrogate value information has passed.[7] Furthermore, the Department generally will not accept business proprietary information in either the surrogate value submissions or the rebuttals thereto, as the regulation regarding the submission of surrogate values allows only for the submission of publicly available information.[8]

Assessment Rates

Upon issuing the final results of the new shipper review, the Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of new shipper review. For any individually examined respondents whose weighted-average dumping margin is above *de minimis,* we will calculate importer-specific ad valorem duty assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1).[9]

We will instruct CBP to assess antidumping duties on all appropriate entries covered by this new shipper review when the importer-specific assessment rate calculated in the final results of this review is above *de minimis.* Where either the respondent's weighted-average dumping margin is zero or *de minimis,* or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. The Department recently announced a refinement to its assessment practice in NME cases. Pursuant to this refinement in practice, for entries that were not reported in the U.S. sales databases submitted by company individually examined during this new shipper review, the Department will instruct CBP to liquidate such entries at the PRC-wide rate. In addition, if the Department determines that the exporter under review had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.,* at that exporter's rate) will be liquidated at the PRC-wide rate.[10]

The final results of this new shipper review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this new shipper 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 sections 751(a)(2)(C) of the Act: (1) For TWS China, which has a separate rate, the cash deposit rate will be that established in the final results of this review (except, if the rate is zero or *de minimis,* then zero cash deposit will be required); (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 existing 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 that for the PRC-wide entity; 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 also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.214.

Dated: February 26, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

1. Background.
2. Scope of the Order.
3. *Bona Fide* Sale Analysis.
4. Nonmarket Economy Country.
5. Separate Rates.
6. Surrogate Country and Surrogate Value Data.
7. Surrogate Country.
8. Economic Comparability.
9. Significant Producers of Identical or Comparable Merchandise.
10. Data Availability.
11. Date of Sale.
12. Fair Value Comparisons.
13. U.S. Price.

[6] *See* 19 CFR 351.310(d).

[7] *See, e.g., Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part,* 72 FR 58809 (October 17, 2007), and accompanying Issues and Decision Memorandum at Comment 2.

[8] *See* 19 CFR 351.301(c)(3).

[9] In these preliminary results, the Department applied the assessment rate calculation method adopted in Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification, 77 FR 8101 (February 14, 2012).

[10] For a full discussion of this practice, see Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties, 76 FR 65694 (October 24, 2011).

14. Normal Value.
15. Factor Valuations.
16. Currency Conversion.
17. Adjustment Under Section 777A(f) of the Act.
18. Conclusion.

[FR Doc. 2013–05042 Filed 3–4–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–866]

Folding Gift Boxes From the People's Republic of China: Final Results of the Second Sunset Review and Continuation of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On October 26, 2012, the Department of Commerce (the ''Department'') published the preliminary results of the second sunset review of the antidumping duty order on folding gift boxes from the People's Republic of China (''PRC''). We gave interested parties an opportunity to comment on the preliminary results. The Folding Gift Boxes Fair Trade Coalition (''Domestic Parties'') [1] filed comments in support of the Department's preliminary results and no other party submitted comments. Further, as a result of the determinations by the Department and the International Trade Commission (''ITC'') that revocation of the antidumping duty order would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, the Department is publishing a notice of continuation of the antidumping duty order.

DATES: *Effective Date:* March 5, 2013.

FOR FURTHER INFORMATION CONTACT: Demitri Kalogeropoulos, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2623.

SUPPLEMENTARY INFORMATION:

Background

On October 26, 2012, the Department published the preliminary results [2] of the second sunset review on the antidumping duty order [3] on folding gift boxes from the PRC. We invited interested parties to comment on the *Preliminary Results*. Domestic Parties filed comments in support of the Department's *Preliminary Results* and no other party submitted comments. Due to the complex issues discussed in the *Preliminary Results,* the Department has conducted a full sunset review pursuant to section 75l(c)(5)(C) of the Tariff Act of 1930, as amended (''the Act'').

On December 10, 2012, the ITC determined, pursuant to section 751(c) of the Act, that revocation of the *Order* would likely lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[4]

Scope of the Order

The products covered by the order are certain folding gift boxes. Folding gift boxes are a type of folding or knock-down carton manufactured from paper or paperboard. Folding gift boxes are produced from a variety of recycled and virgin paper or paperboard materials, including, but not limited to, clay-coated paper or paperboard and kraft (bleached or unbleached) paper or paperboard. The scope of the order excludes gift boxes manufactured from paper or paperboard of a thickness of more than 0.8 millimeters, corrugated paperboard, or paper mache. The scope also excludes those gift boxes for which no side of the box, when assembled, is at least nine inches in length.

Folding gift boxes included in the scope are typically decorated with a holiday motif using various processes, including printing, embossing, debossing, and foil stamping, but may also be plain white or printed with a single color. The subject merchandise includes folding gift boxes, with or without handles, whether finished or unfinished, and whether in one-piece or multi-piece configuration. One-piece gift boxes are die-cut or otherwise formed so that the top, bottom, and sides form a single, contiguous unit. Two-piece gift boxes are those with a folded bottom and a folded top as separate pieces. Folding gift boxes are generally packaged in shrink-wrap, cellophane, or other packaging materials, in single or multi-box packs for sale to the retail customer. The scope excludes folding gift boxes that have a retailer's name, logo, trademark or similar company information printed prominently on the box's top exterior (such folding gift boxes are often known as ''not-for-resale'' gift boxes or ''give-away'' gift boxes and may be provided by department and specialty stores at no charge to their retail customers). The scope of the order also excludes folding gift boxes where both the outside of the box is a single color and the box is not packaged in shrink-wrap, cellophane, other resin-based packaging films, or paperboard.

Imports of the subject merchandise are classified under Harmonized Tariff Schedules of the United States (''HTSUS'') subheadings 4819.20.0040 and 4819.50.4060. These subheadings also cover products that are outside the scope of the order. Furthermore, although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

Final Determination of Likelihood of Continuation or Recurrence of Dumping

In the *Preliminary Results,* the Department preliminarily determined that dumping would likely continue or recur if the *Order* were revoked, because the Department found dumping above *de minimis* levels in the investigation segment of this proceeding, and we determined that folding gift box imports from the PRC have been increasing in volume during the period of this sunset review. Thus, since issuance of the *Order,* dumping has continued at rates exceeding *de minimis* levels, which suggests that dumping is likely to continue if the *Order* is revoked.

As stated above, Domestic Parties submitted comments in support of our *Preliminary Results,* and we did not receive comment from any respondent interested party. Therefore, for the reasons explained in the *Preliminary Results,* we continue to determine dumping would likely continue or recur if the *Order* were revoked.

Final Determination of Magnitude of the Dumping Margin Likely To Prevail

In the *Preliminary Results,* the Department noted that section 752(c)(3) of the Act provides that the administering authority shall provide to the ITC the magnitude of the margin of dumping that is likely to prevail if the order were revoked. While normally, the Department will select a margin from the final determination in the investigation because that is the only

[1] The Folding Gift Boxes Fair Trade Coalition is comprised of Harvard Folding Gift Box Company, Inc. and Graphic Packaging International, Inc., both U.S. producers of folding gift boxes.

[2] *See Folding Gift Boxes From the People's Republic of China: Preliminary Results of the Second Sunset Review of the Antidumping Duty Order,* 77 FR 65361 (October 26, 2012) (''*Preliminary Results*'').

[3] *See Notice of Antidumping Duty Order: Certain Folding Gift Boxes From the People's Republic of China,* 67 FR 864 (January 8, 2002) (''*Order*'').

[4] *See* Folding Gift Boxes from China: Investigation No. 731–TA–921 (Second Review), USITC Publication 4365 (November 2012).

calculated rate that reflects the behavior of exporters without the discipline of an order or suspension agreement in place, under certain circumstances, the Department may select a more recently calculated rate to report to the ITC. Thus, we determined that the margins likely to prevail were the order revoked would be above *de minimis.* As stated above, Domestic Parties submitted comments in support of our *Preliminary Results,* and we did not receive comments from any respondent interested party. Therefore, for the reasons explained in the *Preliminary Results,* we continue to determine that the margins likely to prevail were the *Order* revoked would be above *de minimis*.

Final Results of Sunset Review

Pursuant to section 751(c) of the Act, the Department determines that revocation of the *Order* on folding gift boxes from the PRC would likely lead to continuation or recurrence of dumping at the rate listed below:

Exporter	Weighted-average margin
All exporters [5]	Above *de minimis.*

Notification Regarding Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Continuation of the Order

As a result of the determinations by the Department and the ITC that revocation of the *Order* on folding gift boxes from the PRC would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty order on folding gift boxes from the PRC. U.S. Customs and Border Protection will continue to collect antidumping duty cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation of the *Order* will be the date of publication in the **Federal Register** of this notice of final results and continuation. Pursuant to section 751(c)(2) of the Act, the Department intends to initiate the next five-year review of the *Order* not later than 30 days prior to the fifth anniversary of the effective date of continuation.

We are issuing and publishing these results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: February 25, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2013–05055 Filed 3–4–13; 8:45 am]

BILLING CODE 3510–DS–P

[5] Max Fortune Industrial Ltd. was excluded from the *Order. See Order.*

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–822]

Stainless Steel Sheet and Strip in Coils From Mexico: Notice of Settlement of NAFTA Proceedings

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is announcing the settlement of proceedings before five separate North American Free Trade Agreement (NAFTA) binational dispute settlement panels.

DATES: *Effective Date:* March 5, 2013.

FOR FURTHER INFORMATION CONTACT: Mykhaylo Gryzlov, Office of the Chief Counsel for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0833.

SUPPLEMENTARY INFORMATION:

Background

On July 27, 1999, the Department published the antidumping duty order on stainless steel sheet and strip in coils from Mexico (SSSS from Mexico). *See Stainless Steel Sheet and Strip in Coils from Mexico,* 64 FR 40560 (July 27, 1999) (notice of amended LTFV determination and antidumping duty order) (*Order*). Since the *Order* was issued, ThyssenKrupp Mexinox S.A. de C.V. and Mexinox USA, Inc. (together, Mexinox) have challenged various aspects of five administrative reviews [1] of the *Order* before NAFTA panels.[2] On August 10, 2011, the Department revoked the *Order,* effective July 25, 2010, as a result of a sunset review. *See Stainless Steel Sheet and Strip in Coils from Germany, Italy and Mexico,* 76 FR 49450 (August 10, 2011) (revocation of the antidumping duty orders). As a result of this revocation, the Department instructed Customs and Border Protection (CBP) to terminate the suspension of liquidation and collection of cash deposits of the subject merchandise entered or withdrawn from warehouse on or after July 25, 2010.

On September 20, 2012, the Department and Mexinox entered into a Settlement Agreement that fully resolves all pending NAFTA disputes brought by Mexinox. Pursuant to this settlement of litigation, the Department and Mexinox agreed to a termination of the following cases (collectively, the five NAFTA disputes):

1. In the Matter of Stainless Steel Sheet and Strip in Coils from Mexico: Final Results of the 2004–2005 Antidumping Duty Administrative Review, Secretariat File No. USA–MEX–2007–1904–01;
2. In the Matter of Stainless Steel Sheet and Strip in Coils from Mexico: Final Results of the 2005–2006 Antidumping Duty Administrative Review, Secretariat File No. USA–MEX–2008–1904–01;
3. In the Matter of Stainless Steel Sheet and Strip in Coils from Mexico: Final Results of the 2006–2007 Antidumping Duty Administrative Review, Secretariat File No. USA–MEX–2009–1904–02;
4. In the Matter of Stainless Steel Sheet and Strip in Coils from Mexico: Final Results of the 2007–2008 Antidumping Duty Administrative Review, Secretariat File No. USA–MEX–2010–1904–01;
5. In the Matter of Stainless Steel Sheet and Strip in Coils from Mexico: Final Results of the 2008–2009

[1] *Stainless Steel Sheet and Strip in Coils from Mexico,* 71 FR 76978 (December 22, 2006) (admin. review); *Stainless Steel Sheet and Strip in Coils from Mexico,* 73 FR 7710 (February 11, 2008) (admin. review), *as amended by* 73 FR 14215 (March 17, 2008); *Stainless Steel Sheet and Strip in Coils from Mexico,* 74 FR 6365 (February 9, 2009); *Stainless Steel Sheet and Strip in Coils from Mexico,* 75 FR 6627 (February 10, 2010) (admin. review), *as amended by* 75 FR 17122 (April 05, 2010); *Stainless Steel Sheet and Strip in Coils from Mexico,* 76 FR 2332 (January 13, 2011) (admin. review), *as amended by* 76 FR 76 FR 9542 (February 18, 2011).

[2] Allegheny Ludlum Corporation, North American Stainless, and AK Steel Corporation (collectively, the domestic industry or petitioners) challenged certain aspects of the final results of *Stainless Steel Sheet and Strip in Coils from Mexico,* 71 FR 76978 (December 22, 2006) (admin. review). On April 14, 2010, the NAFTA panel affirmed the final results with respect to all aspects challenged by petitioners.

Antidumping Duty Administrative Review, Secretariat File No. USA–MEX–2011–1904–01.

Pursuant to the Settlement Agreement, the five NAFTA disputes have been dismissed. Pursuant to the Settlement Agreement, following the publication of this notice, the Department will instruct CBP to assess appropriate antidumping duties on the affected entries of the subject merchandise and liquidate such entries as indicated below.

Assessment of Duties

Pursuant to the terms of the Settlement Agreement, for any entries of the subject merchandise produced and exported by Mexinox that were entered or withdrawn from warehouse for consumption from July 1, 2004 through June 30, 2005, the Department will instruct CBP to liquidate the entries without regard to antidumping duties. Pursuant to the terms of the Settlement Agreement, for any entries of the subject merchandise produced and exported by Mexinox that were entered or withdrawn from warehouse for consumption from July 1, 2005 through June 30, 2009, the Department will instruct CBP to assess duties at the cash deposit rate in effect at the time of entry.

Dated: February 26, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2013–05060 Filed 3–4–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Monterey Bay National Marine Sanctuary Advisory Council

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

ACTION: Notice and request for applications.

SUMMARY: The ONMS is seeking applications for the following vacant seats on the Monterey Bay National Marine Sanctuary Advisory Council: Commercial Fishing. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the sanctuary. Applicants who are chosen should expect to serve until February 2016.

DATES: Applications are due by April 1, 2013.

ADDRESSES: Application kits may be obtained from 99 Pacific Street, Bldg. 455A, Monterey, CA, 93940 or online at *http://montereybay.noaa.gov/*. Completed applications should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Jacqueline Sommers, 99 Pacific Street, Bldg. 455A, Monterey, CA, 93940, (831) 647–4247, *Jacqueline.sommers@noaa.gov.*

SUPPLEMENTARY INFORMATION: The MBNMS Advisory Council is a community-based group that was established in March 1994 to assure continued public participation in the management of the Sanctuary. Since its establishment, the Advisory Council has played a vital role in decisions affecting the Sanctuary along the central California coast.

The Advisory Council's twenty voting members represent a variety of local user groups, as well as the general public, plus seven local, state and federal governmental jurisdictions. In addition, the respective managers or superintendents for the four California National Marine Sanctuaries (Channel Islands National Marine Sanctuary, Cordell Bank National Marine Sanctuary, Gulf of the Farallones National Marine Sanctuary and the Monterey Bay National Marine Sanctuary) and the Elkhorn Slough National Estuarine Research Reserve sit as non-voting members.

Four working groups support the Advisory Council: The Research Activity Panel (''RAP'') chaired by the Research Representative, the Sanctuary Education Panel (''SEP'') chaired by the Education Representative, the Conservation Working Group (''CWG'') chaired by the Conservation Representative, and the Business and Tourism Activity Panel (''BTAP'') co-chaired by the Business/Industry Representative and Tourism Representative, each dealing with matters concerning research, education, conservation and human use. The working groups are composed of experts from the appropriate fields of interest and meet monthly, or bimonthly, serving as invaluable advisors to the Advisory Council and the Sanctuary Superintendent.

The Advisory Council represents the coordination link between the Sanctuary and the state and federal management agencies, user groups, researchers, educators, policy makers, and other various groups that help to focus efforts and attention on the central California coastal and marine ecosystems.

The Advisory Council functions in an advisory capacity to the Sanctuary Superintendent and is instrumental in helping develop policies, program goals, and identify education, outreach, research, long-term monitoring, resource protection, and revenue enhancement priorities. The Advisory Council works in concert with the Sanctuary Superintendent by keeping him or her informed about issues of concern throughout the Sanctuary, offering recommendations on specific issues, and aiding the Superintendent in achieving the goals of the Sanctuary program within the context of California's marine programs and policies.

Authority: 16 U.S.C. Sections 1431, et seq. (Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: February 26, 2013.

Daniel J. Basta,

Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2013–05011 Filed 3–4–13; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2012–OS–0129]

Manual for Courts-Martial; Proposed Amendments

AGENCY: Joint Service Committee on Military Justice (JSC), Department of Defense.

ACTION: Notice of response to public comments on proposed amendments to the Manual for Courts-Martial, United States (2012 ed.)(MCM).

SUMMARY: The Joint Service Committee on Military Justice (JSC) is publishing final proposed amendments to the Manual for Courts-Martial, United States (MCM) to the Department of Defense. The proposed changes concern the rules of procedure and evidence and the punitive articles applicable in trials by courts-martial. These proposed changes have not been coordinated within the Department of Defense under DoD Directive 5500.1, ''Preparation, Processing and Coordinating Legislation, Executive Orders, Proclamations, Views Letters and Testimony,'' June 15, 2007, and do not

constitute the official position of the Department of Defense, the Military Departments, or any other Government agency.

ADDRESSES: Comments and materials received from the public are available for inspection or copying at the Joint Services Policy and Legislation Section, Military Justice Division, AFLOA/JAJM, 1500 West Perimeter Road, Suite 1130, Joint Base Andrews, Maryland, 20762, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Major Daniel C. Mamber, Chief of Joint Services Policy and Legislation Section, Military Justice Division, AFLOA/JAJM, 1500 West Perimeter Road, Suite 1130, Joint Base Andrews, Maryland, 20762, 240–612–4828, email: *jsc_public_comments@pentagon.af.mil.*

SUPPLEMENTARY INFORMATION:

Background

On October 23, 2012 (77 FR 64854–64887), the JSC published a Notice of Proposed Amendments concerning the rules of procedure and evidence and the punitive articles applicable in trials by courts-martial and a Notice of Public Meeting to receive comments on these proposals. The public meeting was held on December 11, 2012. One member of the public appeared. Several comments were received via electronic mail and were considered by the JSC.

Discussion of Comments and Changes

The JSC considered each public comment, and after making minor modifications, the JSC is satisfied that the proposed amendments are appropriate to implement. Comments that were submitted that are outside the scope of these proposed changes will be considered as part of the JSC's 2013 annual review of the MCM. The JSC will forward the public comments and proposed amendments to the Department of Defense. The public comments regarding the proposed changes follow:

a. One commenter recommended adding the words ''to the victim's privacy'' to RCM 405(i)(2)(B)(iv) after ''unfair prejudice'' when discussing when MRE 412(b) evidence is admissible. Due to the rescission of the proposed change to MRE 412 in the previous year's proposed changes, and its reversion back to its original substance, the JSC has not adopted this proposal. Instead, the JSC will make a different change to RCM405(i)(2)(B), to read as follows:

''(B) *Procedure to determine admissibility.* The procedure to determine admissibility can be found in Mil. R. Evid. 412(c).''

b. One commenter recommended amending the Analysis to MRE 412. The JSC has not adopted this proposal due to the change to the 2012 change, involving the Military Rules of Evidence, in which MRE 412 was not changed and reverted back to its original substance. Instead the JSC proposes to add the following discussion to the Analysis to MRE 412:

''In 2011, the Court of Appeals for the Armed Forces expressed concern with the constitutionality of the balancing test from Rule 412(c)(3) as amended in 2007. *See United States* v. *Gaddis,* 70 M.J. 248 (C.A.A.F. 2011), *United States* v. *Ellerbrock,* 70 M.J. 314 (C.A.A.F. 2011).''

c. One commenter suggested the portion of RCM 405(i) that requires the investigating officer to determine admissibility of MRE 412 evidence by determining whether the ''probative value of such evidence outweighs the danger of unfair prejudice'' is confusing and should instead read that the ''probative value of such evidence outweighs the danger of unfair prejudice *or confusion of the issue.''* However, due to the rescission of the proposed change to MRE 412 in the proposed changes submitted in 2011, and its reversion back to its original substance, the JSC has not adopted this proposal. Instead RCM 405(i)(2)(B) will now be amended as stated in paragraph a, *supra.*

d. One commenter recommended amending the sample specifications under Article 120, UCMJ, Paragraphs f.(7)(a)–(f) to include ''(arouse)(gratify the sexual desire of)'' to correspond to the elements under Abusive Sexual Contact. In addition, based on this comment, JSC noted the same inconsistency in Paragraphs f.(5)(a)–(e). Article 120, UCMJ, Paragraphs f.(5) and (7) will be amended to include the language in the sample specifications.

e. Comments making grammatical corrections were received. Those corrections were made.

f. Comments were received suggesting additional amendments to RCMs 307, 405, 701, 703, 905, 906, 907, 908, 1003, 1004; the Analysis to MREs 513 and 514; Article 120; and Part IV, paragraph 16e pertaining to Article 92, UCMJ. These suggested changes were not incorporated. Several suggested changes were not contemplated in the proposals currently under review. Those suggestions will be considered in the course of the FY13 annual review of the MCM, which is required by DoD Directive 5500.17.

Dated: February 28, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–04994 Filed 3–4–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Task Force on the Care, Management, and Transition of Recovering Wounded, Ill, and Injured Members of the Armed Forces; Notice of Federal Advisory Committee Meeting

AGENCY: Office of the Assistant Secretary of Defense, Department of Defense.

ACTION: Meeting notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the following Federal Advisory Committee meeting of the Department of Defense Task Force on the Care, Management, and Transition of Recovering Wounded, Ill, and Injured Members of the Armed Forces (subsequently referred to as the Task Force) will take place.

DATES: Tuesday, April 2, 2013—Wednesday, April 3, 2013 from 8:00 a.m. to 5:00 p.m. EDT each day.

ADDRESSES: DoubleTree by Hilton Hotel Washington DC-Crystal City, 300 Army Navy Drive, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Mail Delivery service through Recovering Warrior Task Force, Hoffman Building II, 200 Stovall St, Alexandria, VA 22332–0021 ''Mark as Time Sensitive for April Meeting''. Emails to *rwtf@wso.whs.mil.* Denise F. Dailey, Designated Federal Officer; Telephone (703) 325–6640. Fax (703) 325–6710.

SUPPLEMENTARY INFORMATION: *Purpose of the Meeting:* The purpose of the meeting is for the Task Force Members to convene and gather data from panels and briefers on the Task Force's topics of inquiry.

Agenda: (Refer to *http://dtf.defense.gov/rwtf/meetings.html* for the most up-to-date meeting information).

Day One: Tuesday, April 2, 2013

8:00 a.m.–9:15 a.m.—Task Force Members Site Visit After Action Review

9:15 a.m.–9:30 a.m.—Break

9:30 a.m.–10:30 a.m.—Office of the Assistant Secretary of Defense for Health Affairs Centers of Excellence Oversight Board
10:30 a.m.–10:45 a.m.—Break
10:45 a.m.–11:30 a.m.—Office of the Assistant Secretary of Defense for Health Affairs (Medical Home)
11:30 a.m.–12:15 p.m.—Office of the Assistant Secretary of Defense for Health Affairs (Urogenital Injuries)
12:15 p.m.–1:00 p.m.—Break for Lunch
1:00 p.m.–2:00 p.m.—Office of the Assistant Secretary of Defense for Health Affairs (Defense Health Agency Executive Office of Transition
2:00 p.m.–2:15 p.m.—Break
2:15 p.m.–3:45 p.m.—Department of the Navy N8 Engineering Process improvements using Industrial Approaches for Navy IDES and Comprehensive Combat and Complex Casualty Care (C5)
3:45 p.m.–4:00 p.m.—Break
4:00 p.m.–5:00 p.m.—VA-DoD Interagency Care and Coordination Committee (IC3)
5:00 p.m.—Wrap Up

Day Two: Wednesday, April 3, 2013

8:00 a.m.–8:15 a.m.—Public Forum
8:15 a.m.–9:00 a.m.—Results of the DoD/VA Employment Task Force
9:00 a.m.–9:15 a.m.—Break
9:15 a.m.–10:15 a.m.—Office of the Assistant Secretary of Defense for Health Affairs TRICARE Management Activity Survey
10:15 a.m.–10:30 a.m.—Break
10:30 a.m.–12:00 p.m.—Office of Warrior Care Policy
12:00 p.m.–1:00 p.m.—Break for Lunch
1:00 p.m.–2:30 p.m.—Nonprofits Panel: Yellow Ribbon Fund, Wounded Warrior Project, Hope for the Warriors
2:30 p.m.–2:45 p.m.—Break
2:45 p.m.–3:45 p.m.—Center for Deployment Psychology
3:45 p.m.–4:00 p.m.—Break
4:00 p.m.–5:00 p.m.—Returning Warrior Workshops, Yellow Ribbon Reintegration Program
5:00 p.m.—Wrap Up

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is on a first-come basis.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements to the Department of Defense Task Force on the Care, Management, and Transition of Recovering Wounded, Ill, and Injured Members of the Armed Forces about its mission and functions. If individuals are interested in making an oral statement during the Public Forum time period, a written statement for a presentation of two minutes must be submitted (see **FOR FURTHER INFORMATION CONTACT**) and must identify it is being submitted for an oral presentation by the person making the submission. Identification information must be provided and at a minimum must include a name and a phone number. Individuals may visit the Task Force Web site at *http://dtf.defense.gov/rwtf/to* view the Charter. Individuals making presentations will be notified by Wednesday, March 27, 2013. Oral presentations will be permitted only on Wednesday, April 3, 2013 from 8:00 a.m. to 8:15 a.m. EDT before the Task Force. The number of oral presentations will not exceed ten, with one minute of questions available to the Task Force members per presenter. Presenters should not exceed their two minutes.

Written statements in which the author does not wish to present orally may be submitted at any time or in response to the stated agenda of a planned meeting of the Department of Defense Task Force on the Care, Management, and Transition of Recovering Wounded, Ill, and Injured Members of the Armed Forces.

All written statements shall be submitted to the Designated Federal Officer for the Task Force through the contact information in **FOR FURTHER INFORMATION CONTACT**, and this individual will ensure that the written statements are provided to the membership for their consideration.

Statements, either oral or written, being submitted in response to the agenda mentioned in this notice must be received by the Designated Federal Officer at the address listed in **FOR FURTHER INFORMATION CONTACT** no later than 5:00 p.m. EDT, Monday, March 25, 2013 which is the subject of this notice. Statements received after this date may not be provided to or considered by the Task Force until its next meeting. Please mark mail correspondence as ''Time Sensitive for April Meeting.''

The Designated Federal Officer will review all timely submissions with the Task Force Co-Chairs and ensure they are provided to all members of the Task Force before the meeting that is the subject of this notice.

Reasonable accommodations will be made for those individuals with disabilities who request them. Requests for additional services should be directed to Ms. Heather Moore, (703) 325–6640, by 5:00 p.m. EDT, Monday, March 25, 2013.

Dated: February 28, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–05005 Filed 3–4–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2013–OS–0019]

Privacy Act of 1974; System of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to delete a System of Records.

SUMMARY: The Defense Logistics Agency is deleting a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on April 5, 2013 unless comments are received which result in a contrary determination. Comments will be accepted on or before April 4, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Jody Sinkler, DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221, or by phone at (703) 767–5045.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency system of records notice subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**. The proposed deletions are

not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: February 28, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S335.01

SYSTEM NAME:

Training and Employee Development Record System (August 11, 2010, 75 FR 48655)

REASON:

The Defense Logistics Agency (DLA) systems of records notice, S335.01, Training and Employee Development Record System, duplicates existing DoD-wide and OPM/Government-wide Privacy Act systems of records which cover Training and Employee Development Records. DoD-wide and OPM/Government-wide notices can be found at *http://dpclo.defense.gov/privacy/SORNs/SORNs.html.*

[FR Doc. 2013–05027 Filed 3–4–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2013–OS–0041]

Privacy Act of 1974; System of Records

AGENCY: Defense Information Systems Agency, DoD.

ACTION: Notice to delete nineteen systems of records notices.

SUMMARY: The Defense Information Systems Agency is deleting nineteen systems of records notices in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on April 5, 2013 unless comments are received which result in a contrary determination. Comments will be accepted on or before April 4, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Jeanette Weathers-Jenkins, 6916 Cooper Avenue, Fort Meade, MD 20755–7901, or (301) 225–8158.

SUPPLEMENTARY INFORMATION: The Defense Information Systems Agency systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**. The proposed deletions are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: February 28, 2013.

Aaron Siegel,

Alternate OSD **Federal Register** *Liaison Officer, Department of Defense.*

Deletions:

K107.01, Investigation of Complaint of Discrimination (February 22, 1993, 58 FR 10562).

KMIN.01, Minority Identification File List (February 22, 1993, 58 FR 10562).

Reason: Based on a recent review of the systems of records notices (SORNs) K107.01, Investigation of Complaint of Discrimination (February 22, 1993, 58 FR 10562) and KMIN.01, Minority Identification File List (February 22, 1993, 58 FR 10562), are covered by the Government wide system of records notice EEOC/GOVT–1, Equal Employment Opportunity in the Federal Government Complaint and Appeal Records (July 30, 2002, 67 FR 49338). Therefore, these notices can be deleted. Government-wide notices can be found at *http://dpclo.defense.gov/privacy/SORNs/govt/Gov_Wide_Notices.html.*

K700.02, Civilian Award Program File (February 22, 1993, 58 FR 10562).

K700.17 603–01, Official Personnel Folder Files (Standard Form 66) (August 9, 1993, 58 FR 42302).

K700.09 603–02, Services Record Card Files (February 22, 1993, 58 FR 10562).

K700.07, Employee Record File (February 22, 1993, 58 FR 10562).

K890.05, Overseas Rotation Program Files (February 22, 1993, 58 FR 10562).

Reason: Based on a recent review of the systems of records notices K700.02, Civilian Award Program File (February 22, 1993, 58 FR 10562); K700.17 603–01, Official Personnel Folder Files (Standard Form 66) (August 9, 1993, 58 FR 42302); K700.09 603–02, Services Record Card Files (February 22, 1993, 58 FR 10562); K700.07, Employee Record File (February 22, 1993, 58 FR 10562) and K890.05, Overseas Rotation Program Files (February 22, 1993, 58 FR 10562) are covered by Government wide system of records notice OPM Govt-1, General Personnel Records (December 11, 2012, 77 FR 79694) and therefore can be deleted. Government-wide notices can be found at *http://dpclo.defense.gov/privacy/SORNs/govt/Gov_Wide_Notices.html.*

K700.13 602–26, Retention Register Files (February 22, 1993, 58 FR 10562).

K700.035 602–11, Active Application Files (Applicant Supply Files) (February 22, 1993, 58 FR 10562).

K700.11 602–18, Promotion Register and Record Files (February 22, 1993, 58 FR 10562).

K700.04, Priority Reassignment Eligible File (February 22, 1993, 58 FR 10562).

K700.12 602–10, Civil Service Certificate Files (February 22, 1993, 58 FR 10562).

Reason: Based on a recent review of the systems of records notices K700.13 602–26, Retention Register Files (February 22, 1993, 58 FR 10562); K700.035 602–11, Active Application Files (Applicant Supply Files) (February 22, 1993, 58 FR 10562); K700.11 602–18, Promotion Register and Record Files (February 22, 1993, 58 FR 10562); K700.04, Priority Reassignment Eligible File (February 22, 1993, 58 FR 10562); and K700.12 602–10, Civil Service Certificate Files (February 22, 1993, 58 FR 10562) it was found they are covered by the Government wide system of records notice OPM Govt-5, Recruiting, Examining, and Placement Records (June 19, 2006, 71 FR 35351) and therefore can be deleted. Government-wide notices can be found at *http://dpclo.defense.gov/privacy/SORNs/govt/Gov_Wide_Notices.html.*

K700.16, Classification Appeals File (February 22, 1993, 58 FR 10562).

K700.10 603–08, Annual Classification Maintenance Review File (February 22, 1993, 58 FR 10562).

Reasons: Based on a recent review of the systems of records notices K700.16, Classification Appeals File (February 22, 1993, 58 FR 10562); and K700.10 603–08, Annual Classification Maintenance Review File (February 22, 1993, 58 FR 10562), it was found that they are covered by OPM Govt-9, File on

Position Classification Appeals, Job Grading Appeals, and Retained Grade or Pay Appeals, and Fair Labor Standard Act (FLSA) Claims and Complaints (June 19, 2006, 71 FR 35358), and can therefore be deleted. Government-wide notices can be found at *http://dpclo.defense.gov/privacy/SORNs/govt/Gov_Wide_Notices.html.*

KPAC.02, Authorization to Sign for Classified Material List (February 22, 1993, 58 FR 10562).

Reason: The SORN KPAC.2, Authorization to Sign for Classified Material List is covered by K890.13, Security Container Information (September 22, 2010, 75 FR 57740). All files were destroyed after expiration of the retention period and all active files were transferred. Therefore KPAC.2, Authorization to Sign for Classified Material List can be deleted.

K700.05, Executive Level Position Files (February 22, 1993, 58 FR 10562).

Reason: The SORN K700.05, Executive Level Position Files is covered by OPM Govt-2, Employee Performance File System Records (June 19, 2006, 71 FR 35347). All files were destroyed after expiration of the retention period and all active files were transferred. Therefore K700.05, Executive Level Position Files can be deleted. Government-wide notices can be found at *http://dpclo.defense.gov/privacy/SORNs/govt/Gov_Wide_Notices.html.*

K240.03, Clearance File for Defense Information Systems Agency (DISA) Personnel (February 22, 1993, 58 FR 10562).

Reasons: The SORN K240.03, Clearance File for Defense Information Systems Agency (DISA) is now covered by DMDC 12 DoD, Joint Personnel Adjudication System (JPAS) (May 3, 2011, 76 FR 24863). All closed case files were destroyed after expiration of the retention period and all active case files were transferred and therefore K240.03 can be deleted.

KEUR.10, Personnel File (February 22, 1993, 58 FR 10562).

Reason: The SORN KEUR.10, Personnel File is covered by OPM Govt-1, General Personnel Records (December 11, 2012, 77 FR 79694). All files were destroyed or transferred after expiration of the retention period. Therefore KEUR.10, Personnel Files can be deleted. Government-wide notices can be found at *http://dpclo.defense.gov/privacy/SORNs/govt/Gov_Wide_Notices.html.*

K700.06, Report of Defense Related Employment (February 22, 1993, 58 FR 10562).

Reason: The SORN K700.06, Report of Defense Related Employment is covered by OPM Govt-3, Records of Adverse Actions, Performance Based Reduction in Grade and Removal Actions, and Termination of Probationers (June 19, 2006, 71 FR 35350), the DD Form 1787 (Report of DoD and Defense Related Employment As Required by 10 U.S.C. 2397) has been cancelled, so therefore the notice can be deleted. Government-wide notices can be found at *http://dpclo.defense.gov/privacy/SORNs/govt/Gov_Wide_Notices.html.*

[FR Doc. 2013–05039 Filed 3–4–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2013–OS–0033]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice to add a New System of Records.

SUMMARY: The Office of the Secretary of Defense proposes to add a new system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on April 5, 2013 unless comments are received which result in a contrary determination. Comments will be accepted on or before April 4, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Allard, Chief, OSD/JS Privacy Office, Freedom of Information Directorate, Washington Headquarters Service, 1155 Defense Pentagon, Washington, DC 20301–1155, or by phone at (571) 372–0461.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**. The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on February 21, 2013, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: February 28, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DWHS C01

SYSTEM NAME:

Enterprise Support Portal (ESP).

SYSTEM LOCATION:

Washington Headquarters Service, Enterprise Information Technology Services Directorate, 1155 Defense Pentagon, Room 3B957, Washington, DC 20301–1155.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military personnel, DoD civilian employees and contractor employees assigned to the Office of the Secretary of Defense (OSD), the Pentagon Force Protection Agency (PFPA), or Washington Headquarters Services (WHS).

CATEGORIES OF RECORDS IN THE SYSTEM:

Full name, DoD ID number, work contact information (phone number, DoD email address, and physical location), alternate worksite address, alternate worksite telephone number, and alternate worksite email address. Copies of network acceptable use agreements, existence/non-existence of work related reportable items (e.g., issuance of parking passes, passports, Blackberries, laptops).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 113, Secretary of Defense; DoD Directive 5105.53, Director of Administration and Management; and DoD Directive 5110.4, Washington Headquarters Services.

PURPOSE(S):

To assist OSD Components in organizational management tasks, manpower-related tasks, and general administrative tasks related to employees by retrieving information from the authoritative sources and storing administrative information within the Enterprise Support Portal. To process network/system account requests, IT service/helpdesk requests, and facilities requests.

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 of 1974, as amended, the records contain herein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD Blanket Routine Uses set forth at the beginning of the Office of the Secretary of Defense (OSD) systems of records notices may apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Name and/or DoD ID number.

SAFEGUARDS:

Records are maintained in a controlled area accessible only to authorized personnel. Entry is restricted to personnel with a valid requirement and authorization to enter. Physical access is restricted by the use of locks, guards and administrative procedures. Access to personally identifiable information is role based and restricted to those who require the records in the performance of their official duties. Access is further restricted by the use of system permissions and Common Access Cards (CAC). All individuals granted access to this system must receive annual Information Assurance and Privacy Act training.

RETENTION AND DISPOSAL:

Records are destroyed three years after departure of the individual.

SYSTEM MANAGER AND ADDRESS:

Manager, Enterprise System Portal, Washington Headquarters Services, 1235 S. Clark Street, Suite 920, Arlington, VA 22202–4366.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Manager, Enterprise System Portal, Washington Headquarters Services, 1235 S. Clark Street, Suite 920, Arlington, VA 22202–4366.

Requests should contain the first and last name of the individual, the DoD ID number, and be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquires to the Office of the Secretary of Defense/Joint Staff Freedom of Information Act Requester Service Center, Washington Headquarters Services/Executive Services Directorate, 4800 Mark Center Drive, Alexandria, VA 22350–3100.

Requests should be signed and include the first and last name, the DoD ID number, and the name and number of this system of records notice.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, contesting contents, and appealing initial agency determinations are contained in OSD Administrative Instruction 81; 32 Code of Federal Regulations part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Defense Civilian Personnel Data System, Defense Enrollment Eligibility Reporting System, Military Personnel, and Global Force Management-Data Initiative (GFM–DI).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2013–05047 Filed 3–4–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2013–OS–0042]

Privacy Act of 1974; System of Records

AGENCY: United States Marine Corps, DoD.

ACTION: Notice to delete twenty-three Systems of Records.

SUMMARY: The U.S. Marine Corps is deleting twenty-three systems of records notices from its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on April 5, 2013 unless comments are received which result in a contrary determination. Comments will be accepted on or before April 4, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Sally Hughes, Headquarters, U.S. Marine Corps, FOIA/PA Section (ARSF), 3000 Marine Corps Pentagon, Washington, DC 20380–1775 or by telephone at (703) 614–4008.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**.

The U.S. Marine Corps proposes to delete twenty-three systems of records notices from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: February 28, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletions:

MHD00001, Biographical Files (February 22, 1993, 58 FR 10630).

Reason:

Records are covered by NM 05724–1 Fleet Hometown News System (FHNS) Records. All records have been scanned and relocated to system.

Therefore, MHD00001, Biographical Files can be deleted.

MHD00006, Register/Lineal Lists (February 22, 1993, 58 FR 10630).

Reason: Records are covered by M01070–6, Marine Corps Official

Military Personnel Files. All files have been scanned and relocated to system.

Therefore, MHD00006, Register/Lineal Lists can be deleted.

MIL00015, Housing Referral Services Records System (February 22, 1993, 58 FR 10630).

Reason: Records are covered by NM11101–1, DON Family and Bachelor Housing Program. All records that have met their retention have been deleted. All others have been incorporated into the new system.

Therefore, MIL00015, Housing Referral Services Records System can be deleted.

MIL00016, Depot Maintenance Management Subsystem (DMMS) (February 22, 1993, 58 FR 10630).

Reason: Records are covered by NM0742–1, Time and Attendance Feeder Records. All records that have met their retention have been deleted. All others have been incorporated into the new system.

Therefore, MIL00016, Depot Maintenance Management Subsystem (DMMS) can be deleted.

MIL00017, Transportation Data Financial Management System (TDFMS) (February 22, 1993, 58 FR 10630).

Reason: Records are covered by F024 AF USTRANSCOM D DOD, Defense Transportation System Records. All records that have met their retention have been deleted. All others have been incorporated into the new system.

Therefore, MIL00017, Transportation Data Financial Management System (TDFMS) can be deleted.

MJA00010, Unit Punishment Book (August 3, 1993, 58 FR 41254).

Reason: Records are covered by two existing system; M01040–3 Marine Corps Manpower Management Information System Records, and M01070–6, Marine Corps Official Military Personnel Files. All records that have met their retention have been deleted. All others have been incorporated into the new systems.

Therefore, MJA00010, Unit Punishment Book can be deleted.

MMC00004, Adjutant Services Section Discharge Working Files (August 3, 1993, 58 FR 41254).

Reason: Records are covered by two system; M01040–3 Marine Corps Manpower Management Information System Records, and M01070–6, Marine Corps Official Military Personnel Files. All records that have met their retention have been deleted. All others have been incorporated into the new systems.

Therefore, MMC00004, Adjutant Services Section Discharge Working Files can be deleted.

MMC00008, Message Release/Pickup Authorization File (October 22, 1999, 64 FR 57071).

Reason: Records are covered by M06320–1 Marine Corps Total Information Management Records. All records that have met their retention have been deleted. All others have been incorporated into the new system.

Therefore, MMC00008, Message Release/Pickup authorization File can be deleted.

MMC00009, Narrative Biographical Data with Photos (August 3, 1993, 58 FR 41254).

Reason: Records are covered by M01070–6, Marine Corps Official Military Personnel Files. All files have been scanned and relocated to system.

Therefore, MMC00009, Narrative Biographical Data with Photos can be deleted.

MMN00005, Marine Corps Education Program (October 22, 1999, 64 FR 57071).

Reason: Records are covered by three existing systems; M01040–3, Marine Corps Manpower Management Information System Records, NM01560–2 Department of Defense Voluntary Education System, and NM01500–2 Department of the Navy Education and Training Records. All records that have met their retention have been deleted. All others have been incorporated into the new system.

Therefore, MMN00005, Marine Corps Education Program can be deleted.

MMN00010, Personnel Services Working Files (February 22, 1993, 58 FR 10630).

Reason: Records are covered by two existing systems; M01070–6, Marine Corps Official Military Personnel Files, and M01133–3, Marine Corps Recruiting Information Support System. All records that have met their retention have been deleted. All others have been incorporated into the new system.

Therefore, MMN00010, Personnel Services Working Files can be deleted.

MMN00011, Source Data Automated Fitness Report System (February 22, 1993, 58 FR 10630).

Reason: Records are covered by an existing system, M01070–6, Marine Corps Official Military Personnel Files. All files have been scanned and relocated to system.

Therefore, MMN00011, Source Data Automated Fitness Report System can be deleted.

MMN00013, Personnel Management Working Files (February 22, 1993, 58 FR 10630).

Reason: Records are covered by four existing systems; M01133–3, Marine Corps Recruiting Information Support System, M01040–3 Marine Corps Manpower Management Information System Records, M01070–6, Marine Corps Official Military Personnel Files, and M06320–1 Marine Corps Total Information Management Records. All records that have met their retention have been deleted. All others have been incorporated into the new system.

Therefore, MMN00013, Personnel Management Working Files can be deleted.

MMN00027, Marine Corps Military Personnel Records Access Files (February 22, 1993, 58 FR 10630).

Reason: Records are accessed via Marine Corps Total Force System (MCTFS) which is covered under M01040–3 Marine Corps Manpower Management Information System Records, M01070–6, Marine Corps Official Military Personnel Files, and M06320–1 Marine Corps Total Information Management Records. All records that have met their retention have been deleted. All others have been incorporated into the new systems.

Therefore, MMN00027, Marine Corps Military Personnel Records Access Files can be deleted.

MMN00034, Personnel Procurement Working Files (August 17, 1999, 64 FR 44698).

Reason: Records are covered by four existing systems; M01133–3, Marine Corps Recruiting Information Support System, M01040–3 Marine Corps Manpower Management Information System Records, M01070–6, Marine Corps Official Military Personnel Files, and M06320–1 Marine Corps Total Information Management Records. All records that have met their retention have been deleted. All others have been incorporated into the new systems.

Therefore, MMN00034, Personnel Procurement Working Files can be deleted.

MMN00035, Truth Teller/Static Listings (February 22, 1993, 58 FR 10630).

Reason: Records are covered by M01070–6, Marine Corps Official Military Personnel Files. All files have been scanned and relocated into the new system.

Therefore, MMN00035, Truth Teller/Static Listings can be deleted.

MMN00041, Non-Appropriated Fund (NAF) Employee File (February 22, 1993, 58 FR 10630).

Reason: Records are covered by two existing systems; DPR 34 DOD, Defense Civilian Personnel Data System, and NM07010–1, DON Non-Appropriated Funds Standard payroll System. All records that have met their retention have been deleted. All others have been incorporated into the new system.

Therefore, MMN00041, Non-Appropriated Fund (NAF) Employee File can be deleted.

MMN00043, Marine Corps Recreation Property Records and Facilities (February 22, 1993, 58 FR 10630).

Reason: Records are covered by NM01700–1, DON General Morale, Welfare, and Recreation Records. All records that have met their retention have been deleted. All others have been incorporated into the new system.

Therefore, MMN00043, Marine Corps Recreation Property Records and Facilities can be deleted.

MMN00048, Performance Evaluation Review Board (February 22, 1993, 58 FR 10630).

Reason: Records are covered by NM01000–1 Board for Correction of Naval Records Tracking System (BCNRTS) and Case Files. All records that have met their retention have been deleted. All others have been incorporated into the new system.

Therefore, MMN00048, Performance Evaluation Review Board can be deleted.

MMN00049, Manpower Management Information System (February 22, 1993, 58 FR 10630).

Reason: Records are covered by two existing systems; M0140–3 Marine Corps Manpower Management Information System Records and M06320–1 Marine Corps Total Information Management Records. All records that have met their retention have been deleted. All others have been incorporated into the new system.

Therefore, MMN00049, Manpower Management Information System can be deleted.

MMN00051, Individual Recruiter Training Record (February 22, 1993, 58 FR 10630)

Reason: Records are covered by M01133–3, Marine Corps Recruiting Information Support System. All records that have met their retention have been deleted. All others have been incorporated into the new system.

Therefore, MMN00051, Individual Recruiter Training Record can be deleted.

MMT00002, Marine Corps Institute Correspondence Training Records System (February 22, 1993, 58 FR 10630).

Reason: Records are covered by two existing systems; NM01560–2 Department of Defense Voluntary Education System, and NM01500–2 Department of the Navy Education and Training Records. All records that have met their retention have been deleted. All others have been incorporated into the new system.

Therefore, MMT00002, Marine Corps Institute Correspondence Training Records System can be deleted.

MRS00003, Marine Corps Reserve HIV Program (February 22, 1993, 58 FR 10630).

Reason: Records are covered by N016150–2 Health Care Record System. All records that have met their retention have been deleted. All others have been incorporated into the new system.

Therefore, MRS00003, Marine Corps Reserve HIV Program can be deleted.

[FR Doc. 2013–05040 Filed 3–4–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2013–OS–0032]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to alter a System of Records.

SUMMARY: The Defense Logistics Agency proposes to alter a system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on April 5, 2013 unless comments are received which result in a contrary determination April 4, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Jody Sinkler, DLA/FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221, or by phone at (703) 767–5045.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**. The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on February 20, 2013, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: February 28, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S170.04

SYSTEM NAME:

Fraud and Irregularities (July 14, 2008; 73 FR 40304).

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with ''Debarment and Suspension Files.''

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. 133, Under Secretary of Defense for Acquisition, Technology, and Logistics; Pub.L. 95–521, Ethics in Government Act; and DoD Directive 7050.5, Coordination of Remedies for Fraud and Corruption Related to Procurement Activities.''

PURPOSE(S):

Delete entry and replace with ''Information is used in the investigation and prosecution of criminal or civil actions involving fraud, criminal conduct and antitrust violations and is used in determinations to suspend or debar any individual or group of individuals or other entities from DLA procurement and sales.''

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with ''In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, these records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Upon request, contractor suspension and debarment information may be disclosed to other Federal, state, and local agencies and with private industry for the purpose of identifying those contractors that have provided non-conforming parts and/or have performed poorly on contracts.

In response to inquiries concerning DLA's entries into the General Services Administration (GSA) maintained System for Award Management (SAM), DLA may confirm the identity of the individual or other entities listed in SAM.

The DoD Blanket Routine Uses may also apply to this system of records.''

* * * * *

RETRIEVABILITY:

Delete from entry ''or other entity''.

SAFEGUARDS:

Delete entry and replace with ''Physical access to building is protected by uniformed security officers and requires a Common Access Card (CAC) for entry. Records, as well as computer terminals, are maintained in areas accessible only to authorized DLA personnel and are password protected. All who have access to the records are to have taken annual Information Assurance and Privacy training.''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Replace last word with ''Activity.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Inquiry should contain the record subject's full name, home address and telephone number.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system should address written inquiries to the DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Inquiry should contain the record subject's full name, home address and telephone number.''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.''

RECORD SOURCE CATEGORIES:

Delete entry and replace with ''Federal, state and local investigative agencies; other federal agencies; DLA employees; and the subject of the record.''

* * * * *

[FR Doc. 2013–05048 Filed 3–4–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2013–OS–0025]

Privacy Act of 1974; System of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to amend a System of Records.

SUMMARY: The Defense Logistics Agency is proposing to amend a system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on April 5, 2013 unless comments are received which result in a contrary determination. Comments will be accepted on or before April 4, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.*

Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Jody Sinkler, DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221, or by phone at (703) 767–5045.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency's system of record subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**.

The proposed changes to the record system being amended are set forth below. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports.

Dated: February 28, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S110.85

SYSTEM NAME:

Mandatory Declassification Review (MDR) Files (April 29, 2011, 76 FR 24000).

CHANGES:

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''E.O. 13526, Classified National Security Information; DoD Manual 5200.01–V1, DoD Information Security Program: Overview, Classification and Declassification.''

* * * * *

[FR Doc. 2013–05034 Filed 3–4–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2013–OS–0040]

Privacy Act of 1974; System of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to delete two Systems of Records.

SUMMARY: The Defense Logistics Agency is deleting two systems of records notices in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on April 5, 2013 unless comments are received which result in a contrary determination. Comments will be accepted on or before April 4, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.*

Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Jody Sinkler, DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221, or by phone at (703) 767–5045.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency system of records notice subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**. The proposed deletions are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: February 28, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletions:
S600.20

SYSTEM NAME:

DLA Fire and Emergency Services Program Records (May 7, 2010; 75 FR 25213)

S600.30

SYSTEM NAME:

Safety, Health, Injury, and Accident Records (February 5, 2010; 75 FR 5997)

REASON:

DLA is currently using and receiving support from the Department of the Navy ''Enterprise Safety Applications Management System (ESAMS).'' Records are now covered under the Privacy Act system of records for ESAMS, identified as NM05100–5, entitled ''Enterprise Safety Applications Management System (ESAMS)'' last published in the **Federal Register** on March 25, 2011, at 76 FR 16739. Therefore, these notices can be deleted.

[FR Doc. 2013–05054 Filed 3–4–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2013–OS–0036]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice to alter a System of Records.

SUMMARY: The Defense Finance and Accounting Service proposes to alter a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on April 5, 2013 unless comments are received which result in a contrary determination. Comments will be accepted on or before April 4, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

• *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory L. Outlaw, Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications, DFAS–HKC/IN, 8899 E. 56th Street, Indianapolis, IN 46249–0150 or at (317) 212–4591.

SUPPLEMENTARY INFORMATION: The Defense Finance and Accounting Service notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on February 26, 2013, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: February 28, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

T–7900

SYSTEM NAME:

Operational Data Store (ODS) System (July 26, 2006, 71 FR 42357).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Defense Information Systems Agency/Defense Enterprise Computing Center-Ogden, 7879 Wardleigh Road, Hill Air Force Base, UT 84056–5997.''

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Individual's name, Social Security Number (SSN), home address, employment information (employing agency, military branch of service, pay grade, years of service) financial information (bank account number and routing number, basic hourly pay rate) and vender tax identification number.''

* * * * *

STORAGE:

Delete entry and replace with ''Electronic storage media.''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Defense Finance and Accounting Service-Columbus, Operational Data Store System Manager, (ZTEAB/C), Building 11, Section 12–003, 3990 East Broad Street, Columbus, OH 43213–3990.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine

whether information about themselves is contained in this record system should address written inquiries to the Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications, DFAS–ZCF/IN, 8899 E. 56th Street, Indianapolis, IN 46249–0150.

Requests should contain individual's full name, SSN for verification, current address, and provide a reasonable description of what they are seeking.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this record system should address written inquiries to Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications, DFAS–ZCF/IN, 8899 E. 56th Street, Indianapolis, IN 46249–0150.

Request should contain individual's full name, SSN for verification, current address, and telephone number.''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''The Defense Finance and Accounting Service (DFAS) rules for accessing records, for contesting contents and appealing initial agency determinations are published in Defense Finance and Accounting Service Regulation 5400.11–R, 32 CFR 324; or may be obtained from the Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications, DFAS–ZCF/IN, 8899 E. 56th Street, Indianapolis, IN 46249–0150.''

* * * * *

[FR Doc. 2013–05051 Filed 3–4–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2013–OS–0027]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice to amend a System of Records.

SUMMARY: The Defense Finance and Accounting Service proposes to amend a system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on April 5, 2013 unless comments are received which result in a contrary determination. Comments will be accepted on or before April 4, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory L. Outlaw, Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications, DFAS–HKC/IN, 8899 E. 56th Street, Indianapolis, IN 46249–0150 or at (317) 212–4591.

SUPPLEMENTARY INFORMATION: The Defense Finance and Accounting Service notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**.

The proposed changes to the record system being amended are set forth below. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: February 28, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

T7346

SYSTEM NAME:

Defense Joint Military Pay System-Reserve Component (March 21, 2006, 71 FR 14182).

* * * * *

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with ''T7344''.

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Defense Finance and Accounting Service—Indianapolis Center, 8899 E. 56th Street, Indianapolis, IN 46249–0001.''

* * * * *

STORAGE:

Delete entry and replace with ''Electronic storage media.''

RETRIEVABILITY:

Delete entry and replace with ''Name and SSN.''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Director, Military Pay Operations, Military and Civilian Pay Services, Defense Finance and Accounting Service, Indianapolis, 8899 East 56th Street, Indianapolis, IN 46249.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this record system should address written inquiries to the Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications, DFAS–ZCF/IN, 8899 E. 56th Street, Indianapolis, IN 46249–0150.

Requests should contain individual's full name, SSN, current address, and provide a reasonable description of what they are seeking.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this record system should address written inquiries to Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications, DFAS–ZCF/IN, 8899 E. 56th Street, Indianapolis, IN 46249–0150.

Request should contain individual's full name, SSN, current address, and telephone number.''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''The Defense Finance and Accounting Service (DFAS) rules for accessing records, for contesting contents and appealing initial agency determinations are published in Defense Finance and Accounting Service Regulation 5400.11–R, 32 CFR 324; or may be obtained from the Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager,

Corporate Communications, DFAS–ZCF/IN, 8899 E. 56th Street, Indianapolis, IN 46249–0150.''

* * * * *

[FR Doc. 2013–05037 Filed 3–4–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2013–OS–0031]

Privacy Act of 1974; System of Records

AGENCY: Defense Contract Audit Agency, DoD.

ACTION: Notice to alter a System of Records.

SUMMARY: The Defense Contract Audit Agency proposes to alter a system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on April 5, 2013 unless comments are received which result in a contrary determination. Comments will be accepted on or before April 4, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Keith Mastromichalis, DCAA FOIA/Privacy Act Management Analyst, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219, or by telephone at (703) 767–1022.

SUPPLEMENTARY INFORMATION: The Defense Contract Audit Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on February 21, 2013, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: February 28, 2013.

Aaron Siegel,

Alternate OSD **Federal Register** *Liaison Officer, Department of Defense.*

RDCAA 152.1

SYSTEM NAME:

The Enhanced Access Management System (TEAMS) (April 29, 2004, 69 FR 23497).

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Records contain name, Social Security Number (SSN), Department of Defense Identification Number (DoD ID Number), date and place of birth, home address and home phone number, citizenship, position sensitivity, accession date, type and number of DCAA identification, position number, organizational assignment, security adjudication, clearance, eligibility, and investigation data.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''5 U.S.C. 301, Departmental Regulations; DoD Directive 5105.36, Defense Contract Audit Agency; E.O. 10450, Security Requirements for Government Employees, as amended; E.O. 12958, Classified National Security Information; and E.O. 9397 (SSN), as amended.''

* * * * *

STORAGE:

Delete entry and replace with ''Paper records and electronic storage media.''

* * * * *

SAFEGUARDS:

Delete entry and replace with ''Electronic records are maintained in a password-protected network and accessible only to DCAA civilian personnel, management, and administrative support personnel on a need-to-know basis to perform their duties. Access to the network where records are maintained requires a valid Common Access Card (CAC). Electronic files and databases are password protected with access restricted to authorized users. Paper records are secured in locked cabinets, offices, or buildings during non-duty hours.''

RETENTION AND DISPOSAL:

Delete entry and replace with ''Paper and electronic records are retained in the active file until an employee separates from the agency. At that time, records are moved to the inactive file, retained for five years, and then deleted from the system. Paper records and electronic records on tapes produced by this system are destroyed by burning.''

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Security Office, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

For verification purposes, requests should contain name, SSN and/or DoD ID Number, home address and home phone number, and approximate date of their association with DCAA for positive identification of requester.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system should address written inquiries to the Security Office, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

For verification purposes, requests should contain name, SSN and/or DoD ID Number, home address and home phone number, and approximate date of their association with DCAA for positive identification of requester.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''DCAA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DCAA Instruction 5410.10; 32 CFR part 317; or may be obtained from the system manager.''

* * * * *

[FR Doc. 2013–05046 Filed 3–4–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2013–OS–0024]

Privacy Act of 1974; System of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to amend a System of Records.

SUMMARY: The Defense Logistics Agency is proposing to amend a system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on April 5, 2013 unless comments are received which result in a contrary determination. Comments will be accepted on or before April 4, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.*

Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Jody Sinkler, DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221, or by phone at (703) 767–5045.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency's system of record subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**.

The proposed changes to the record system being amended are set forth below. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports.

Dated: February 28, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S500.55

SYSTEM NAME:

Information Technology Access and Control Records (December 2, 2008, 73 FR 73247).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Director, Information Operations, Headquarters Defense Logistics Agency, ATTN: J–6, 8725 John J. Kingman Road, Stop 6226, Fort Belvoir, VA 22060–6221, and the Defense Logistics Agency Primary Level Field Activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.''

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with ''Civilian and military records are deleted 1 year after the user's account is terminated from the system(s) listed on the System Authorization Access Request. Records relating to contractor access are destroyed 3 years after contract completion or termination.''

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Director, Information Operations, ATTN: J–6, 8725 John J. Kingman Road, Stop 6226, Fort Belvoir, VA 22060–6221, and the Information Operations Offices of DLA Primary Level Field Activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Inquiry should contain the subject individual's full name, Social Security Number (SSN), or user identification code.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking to access records about themselves contained in this system of records should address written inquiries to the DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Inquiry should contain the subject individual's full name, Social Security Number (SSN), or user identification code.''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.''

* * * * *

[FR Doc. 2013–05033 Filed 3–4–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2013–OS–0035]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Defense Finance and Accounting Service proposes to alter a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on April 5, 2013 unless comments are received which result in a contrary determination. Comments will be accepted on or before April 4, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory L. Outlaw, Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications, DFAS–HKC/IN, 8899 E. 56th Street, Indianapolis, IN 46249–0150 or at (317) 212–4591.

SUPPLEMENTARY INFORMATION: The Defense Finance and Accounting Service notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**. The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on February 26, 2013, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: February 28, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

T7340

SYSTEM NAME:

Defense Joint Military Pay System-Active Component (March 21, 2006, 71 FR 14179).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Defense Finance and Accounting Service—Indianapolis Center, 8899 E. 56th Street, Indianapolis, IN 46249–0150.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Officers of the Air Force Reserve, Army Reserve, Navy Reserve and Air National Guard on extended active duty; Air Force Reserve and Air National Guard members on active duty where strength accountability remains with the reserve component; military academy cadets; and Armed Forces Health Professions Scholarship Program (AFHPSP) students.''

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''5 U.S.C. 301, Departmental Regulations; 37 U.S.C., Pay and Allowances of the Uniformed Services; DoD Directive 5154.29, DoD Pay and Allowances Policy and Procedures; DoD 7000.14–R, DoD Financial Management Manual, Volume 7A, Military Pay Policy and Procedures—Active Duty and Reserve Pay; Joint Federal Travel Regulations (JFTR), Volume 1, Uniformed Services Member, current edition; and E.O. 9397 (SSN), as amended.''

* * * * *

STORAGE:

Delete entry and replace with ''Electronic storage media.''

* * * * *

SYSTEM MANAGER(S) AND ADDRESSES:

Delete entry and replace with ''Director, Military Pay Operations, Military and Civilian Pay Services, Defense Finance and Accounting Service, Indianapolis, 8899 East 56th Street, Indianapolis, IN 46249–0150.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this record system should address written inquiries to the Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications, DFAS–ZCF/IN, 8899 E. 56th Street, Indianapolis, IN 46249–0150.

Requests should contain individual's full name, SSN, current address, and provide a reasonable description of what they are seeking.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this record system should address written inquiries to Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications, DFAS–ZCF/IN, 8899 E. 56th Street, Indianapolis, IN 46249–0150.

Request should contain individual's full name, SSN, current address, and telephone number.''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''The Defense Finance and Accounting Service (DFAS) rules for accessing records, for contesting contents and appealing initial agency determinations are published in Defense Finance and Accounting Service Regulation 5400.11–R, 32 CFR 324; or may be obtained from the Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications, DFAS–ZCF/IN, 8899 E. 56th Street, Indianapolis, IN 46249–0150.''

* * * * *

[FR Doc. 2013–05050 Filed 3–4–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2013–OS–0034]

Privacy Act of 1974; System of Records

AGENCY: Defense Contract Audit Agency, DoD.

ACTION: Notice to alter a System of Records.

SUMMARY: The Defense Contract Audit Agency proposes to alter a system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on April 5, 2013 unless comments are received which result in

a contrary determination. Comments will be accepted on or before April 4, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Keith Mastromichalis, DCAA FOIA/Privacy Act Management Analyst, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219, telephone (703) 767–1022.

SUPPLEMENTARY INFORMATION: The Defense Contract Audit Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**. The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on February 14, 2013, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: February 28, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

RDCAA 590.8

SYSTEM NAME:

DCAA Management Information System (DMIS) (November 9, 2005, 70 FR 67995).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Defense Contract Audit Agency, Information Technology First Floor, Building 750, 5557 Oriskany Street, Naval Support Activity Mid-South, Millington, TN 38054.''

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Records relating to audit work performed in terms of hours expended by individual employees, dollar amounts audited, exceptions reported, audit activity codes, and net savings to the government as a result of those exceptions; records containing employee data; name, Social Security Number (SSN), time and attendance, and work schedule; and records containing office information, e.g., duty station address, office symbol and telephone number.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''5 U.S.C. 301, Departmental Regulations; DoDD 5105.36, Defense Contract Audit Agency and E.O. 9397 (SSN), as amended.''

* * * * *

SAFEGUARDS:

Delete entry and replace with ''Electronic records are maintained in password-protected network and accessible only to DCAA personnel, management, and administrative support personnel on a need-to-know basis to perform their duties. Access to the network where records are maintained requires a valid Common Access Card (CAC).''

RETENTION AND DISPOSAL:

Delete entry and replace with ''Disposition pending (until the National Archives and Records Administration approves the retention and disposition of these records, treat as permanent.''

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Chief, Information Technology Division, System Design and Development Branch, Defense Contract Audit Agency, First Floor, Building 750, 5557 Oriskany Street, Naval Support Activity Mid-South, Millington, TN 38054.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Chief, Information Technology Division, System Design and Development Branch, Defense Contract Audit Agency, First Floor, Building 750, 5557 Oriskany Street, Naval Support Activity Mid-South, Millington, TN 38054.

Individuals must furnish name, SSN, approximate date of record, and geographic area in which consideration was requested for record to be located and identified.

Official mailing addresses are published as an appendix to the DCAA's compilation of systems notices.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system should address written inquiries to the Chief, Information Technology Division, System Design and Development Branch, Defense Contract Audit Agency, First Floor, Building 750, 5557 Oriskany Street, Naval Support Activity Mid-South, Millington, TN 38054.

Individuals must furnish name, SSN, approximate date of record, and geographic area in which consideration was requested for record to be located and identified.''

* * * * *

[FR Doc. 2013–05045 Filed 3–4–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2013–OS–0038]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice to alter a System of Records.

SUMMARY: The Defense Finance and Accounting Service proposes to alter a system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on April 5, 2013 unless comments are received which result in a contrary determination. Comments will be accepted on or before April 4, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

• *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory L. Outlaw, Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications, DFAS–HKC/IN, 8899 E. 56th Street, Indianapolis, IN 46249–0150 or at (317) 212–4591.

SUPPLEMENTARY INFORMATION: The Defense Finance and Accounting Service notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on February 25, 2013, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: February 28, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

T7335a

SYSTEM NAME:

Automated Time Attendance and Production System (ATAAPS) (February 27, 2007, 72 FR 8698).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Defense Finance & Accounting Service-Indianapolis, ATAAPS System Manager, 8899 East 56th Street, Indianapolis, IN 46249–0150.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Department of Defense and Department of Energy civilian employees.''

* * * * *

PURPOSE:

Delete entry and replace with ''To provide civilian time and attendance services for the Department of Defense (DoD) components and the Department of Energy located worldwide. This system will capture time and attendance, labor and production data for input to payroll and accounting systems. It will also provide the user a single, consolidated input method for reporting both time and attendance and labor information.''

* * * * *

RETRIEVABILITY:

Delete entry and replace with ''Name and SSN.''

SAFEGUARDS:

Delete entry and replace with ''Access to records is limited to individuals who are properly screened and cleared on a need-to-know basis in the performance of their duties. Passwords and user identifications are used to control access to the system data, and procedures are in place to deter browsing and unauthorized access. Physical and electronic access are limited to persons responsible for servicing and authorized to use the system.''

* * * * *

SYSTEM MANAGER AND ADDRESS:

Delete entry and replace with ''Defense Finance and Accounting Service—Indianapolis, ATAAPS System Manager, 8899 East 56th Street, Indianapolis, IN 46249–0150.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this record system should address written inquiries to the Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications, DFAS–ZCF/IN, 8899 E. 56th Street, Indianapolis, IN 46249–0150.

Requests should contain individual's full name, SSN for verification, current address, and provide a reasonable description of what they are seeking.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this record system should address written inquiries to Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications, DFAS–ZCF/IN, 8899 E. 56th Street, Indianapolis, IN 46249–0150.

Request should contain individual's full name, SSN for verification, current address, and telephone number.''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''The Defense Finance and Accounting Service (DFAS) rules for accessing records, for contesting contents and appealing initial agency determinations are published in Defense Finance and Accounting Service Regulation 5400.11–R, 32 CFR 324; or may be obtained from the Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications, DFAS–ZCF/IN, 8899 E. 56th Street, Indianapolis, IN 46249–0150.''

RECORD SOURCE CATEGORIES:

Delete entry and replace with ''From the individual concerned, and DOD Components.''

* * * * *

[FR Doc. 2013–05052 Filed 3–4–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2013–OS–0020]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice to amend a System of Records.

SUMMARY: The Defense Finance and Accounting Service proposes to amend a system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on April 5, 2013 unless comments are received which result in a contrary determination. Comments will be accepted on or before April 4, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive,

East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory L. Outlaw, Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications, DFAS–HKC/IN, 8899 E. 56th Street, Indianapolis, IN 46249–0150 or at (317) 212–4591.

SUPPLEMENTARY INFORMATION: The Defense Finance and Accounting Service notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on January 30, 2013, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: February 28, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

T7220

SYSTEM NAME:

Deployable Disbursing System (DDS) (June 4, 2007, 72 FR 30785).

* * * * *

CHANGES:

Change System ID to read ''T7320a.''

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this record system should address written inquiries to the Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications, DFAS–ZCF/IN, 8899 E. 56th Street, Indianapolis, IN 46249–0150.

Requests should contain individual's full name, SSN for verification, current address, and provide a reasonable description of what they are seeking.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this record system should address written inquiries to Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications, DFAS–ZCF/IN, 8899 E. 56th Street, Indianapolis, IN 46249–0150.

Request should contain individual's full name, SSN for verification, current address, and telephone number.''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''The Defense Finance and Accounting Service (DFAS) rules for accessing records, for contesting contents and appealing initial agency determinations are published in Defense Finance and Accounting Service Regulation 5400.11–R, 32 CFR 324; or may be obtained from the Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications, DFAS–ZCF/IN, 8899 E. 56th Street, Indianapolis, IN 46249–0150.''

* * * * *

[FR Doc. 2013–05028 Filed 3–4–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID USAF–2013–0012]

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to delete a System of Records.

SUMMARY: The Department of the Air Force is deleting a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on April 5, 2013 unless comments are received which result in a contrary determination. Comments will be accepted on or before April 4, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.*

Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Charles J. Shedrick, Department of the Air Force Privacy Office, Air Force Privacy Act Office, Office of Warfighting Integration and Chief Information officer, ATTN: SAF/XCPPI, 1800 Air Force Pentagon, Washington DC 20330–1800 or at 202–404–6575.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**.

The Department of the Air Force proposes to delete one system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: February 28, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletion:

F036 AFPC C

SYSTEM NAME:

Indebtedness, Nonsupport Paternity (June 11, 1997, 62 FR 31793).

REASON:

Records of this type are no longer maintained by any office within the Air Force Personnel Center (AFPC). Correspondence related to indebtedness, nonsupport of dependents, and paternity is managed by the Unit

Commander. Records that document these actions are filed in the Personnel Information File which is covered by Air Force Systems of Records Notice F036 AF PC C, Military Personnel Records System (October 13, 2000, 65 FR 60916). Correspondence regarding garnishment of wages is managed by Defense Finance and Accounting Service (DFAS) and is covered by DFAS Systems of Records Notice T5500b, Integrated Garnishment System (IGS) (September 19, 2012, 77 FR 58106). Paper records previously maintained by AFPC were destroyed by tearing into pieces, shredding, pulping, macerating or burning and electronic records were destroyed by erasing, deleting, or overwriting, in accordance with the National Archives and Records Administration records disposition. Therefore F036 AFPC C, Indebtedness, Nonsupport Paternity (June 11, 1997, 62 FR 31793) can be deleted.

[FR Doc. 2013–05035 Filed 3–4–13; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID USAF–2013–0013]

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to delete a System of Records.

SUMMARY: The Department of the Air Force is deleting a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on April 5, 2013 unless comments are received which result in a contrary determination. Comments will be accepted on or before April 4, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Charles J. Shedrick, Department of the Air Force Privacy Office, Air Force Privacy Act Office, Office of Warfighting Integration and Chief Information officer, ATTN: SAF/CIO A6, 1800 Air Force Pentagon, Washington, DC 20330–1800, or by phone at (571) 256–2515.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**.

The Department of the Air Force proposes to delete one system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: February 28, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletion:

F036 AF PC R

SYSTEM NAME:

Casualty Files (June 11, 1997, 62 FR 31793).

REASON:

Records are covered by DoD System of Records Notice A0600–8–1C AHRC DoD, Defense Casualty Information Processing System (DCIPS) (May 3, 2011, 76 FR 24865). Additional records related to this subject may be filed in the official military records which is covered by Air Force System of Records Notice F036 AF PC C, Military Personnel Records System (October 13, 2000, 65 FR 60916). Therefore F036 AF PC R, Casualty Files (June 11, 1997, 62 FR 31793) can be deleted.

[FR Doc. 2013–05036 Filed 3–4–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID USAF–2013–0016]

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to alter a System of Records.

SUMMARY: The Department of the Air Force proposes to alter a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on April 5, 2013 unless comments are received which result in a contrary determination. Comments will be accepted on or before April 4, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Charles J. Shedrick, Department of the Air Force Privacy Office, Air Force Privacy Act Office, Office of Warfighting Integration and Chief Information Officer, ATTN: SAF/CIO A6, 1800 Air Force Pentagon, Washington, DC 20330–1800, or by phone at (571) 256–2515.

SUPPLEMENTARY INFORMATION: The Department of the Air Force's notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**.

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act, as amended were submitted on February 25, 2013, to the House Committee on Oversight and Government Reform, the Senate

Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996, (February 20, 1996, 61 FR 6427).

Dated: February 28, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F036 AFPC E

SYSTEM NAME:

Disability Retirement Records (June 11, 1997, 62 FR 31793).

* * * * *

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with ''Temporary Disability Retirement List (TDRL) Case Files.''

SYSTEM LOCATION:

Delete entry and replace with ''Headquarters Air Force Personnel Center (HQ AFPC), 550 C Street W, Suite 6, Randolph Air Force Base, TX 78150–4708.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Air Force Active Duty, Reserve, and Air National Guard personnel who are placed on the Temporary Disability Retirement List.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Name; Social Security Number (SSN); Department of Defense Identification number (DoD ID); date of separation; percentage of disability; Department of Veterans Affairs Condition Codes; disposition of the Physical Examination Board (PEB) (i.e., return to duty, permanent retirement, temporary retirement discharge with benefits, discharge without benefits, unfitting condition); combat relation of condition; date of birth; retirement processing records; separation processing records; medical evaluation board reports; physical evaluation board findings; medical reports from Department of Veterans Affairs and civilian medical facilities; appellate actions and reviews taken in the case; correspondence from and to the member; members of Congress; attorneys and other interested parties; and documents concerning the appointment of trustees for mentally incompetent service members.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 8013, Secretary of the Air Force; 10 U.S.C. Chapter 61, Retirement or Separation for Physical Disability; Department of Defense Directive (DoDD) 1332.18, Separation or Retirement for Physical Disability; DoD Instruction (DoDI) 1332.38, Physical Disability Evaluation; Air Force Policy Directive (AFPD) 36–32, Military Retirements and Separations; and Air Force Instruction (AFI) 36–3212, Physical Evaluation for Retention, Retirement and Separation; and E.O. 9397 (SSN), as amended.''

PURPOSE(S):

Delete entry and replace with ''To maintain oversight of Air Force personnel placed on the Temporary Disability Retirement List (TDRL). Individuals remain on the TDRL until reevaluation and removal (discharged, permanently retired, or found fit for duty) or for five years, whichever comes first. The TDRL serves as a safeguard for both the member and the Air Force by delaying permanent disposition for those members whose conditions could improve or get worse, or where the ultimate disposition could change within a reasonable period of time. Records may also be used to respond to official inquiries concerning the disability evaluation proceedings of individuals.''

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Delete entry and replace with ''In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Veterans Affairs in the performance of their duties relating to processing and adjudicating claims, benefits, and medical care.

The DoD Blanket Routine Uses published at the beginning of the Air Force's compilation of systems of records notices may apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974, as amended, or mentioned in this system of records notice.

* * * * *

STORAGE:

Delete entry and replace with ''Paper records and/or electronic storage media.''

RETRIEVABILITY:

Delete entry and replace with ''Name, SSN and/or DoD ID number.''

SAFEGUARDS:

Delete entry and replace with ''Records are accessed by the program manager or by person(s) responsible for servicing the record system in performance of their official duties that are properly screened and cleared for need-to-know. Paper records are stored in secured file cabinets in a locked building with controlled access entry requirements. System software uses Primary Key Infrastructure (PKI)/ Common Access Card (CAC) authentication to lock out unauthorized access. Access to the building is controlled by Security Access Card.''

RETENTION AND DISPOSAL:

Delete entry and replace with ''Temporary paper and electronic records are retained for 30 days after individual is removed from the Temporary Disability Retirement List. Documents designated as permanent remain in the military personnel records system permanently and are retired with the master personnel record group. Paper records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Electronic records are destroyed by erasing, deleting, or overwriting.''

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Assistant Deputy Chief of Staff for Personnel, Headquarters Air Force Personnel Center, Air Force Disability Division (HQ AFPC/DPFD), 550 C Street W, Suite 6, Randolph AFB TX 78150–4708.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Assistant Deputy Chief of Staff for Personnel, Headquarters Air Force Personnel Center, Air Force Disability Division (HQ AFPC/DPFD), 550 C Street W, Suite 6, Randolph AFB TX 78150–4708.

For verification purposes, individual should provide their full name, SSN and/or DoD ID Number, any details which may assist in locating records, and their signature.

In addition, the requester must provide a notarized statement or an

unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United State of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking to access records about themselves contained in this system should address written requests to the Assistant Deputy Chief of Staff for Personnel, Headquarters Air Force Personnel Center, Air Force Disability Division (HQ AFPC/DPFD), 550 C Street W, Suite 6, Randolph AFB TX 78150–4708.

For verification purposes, individuals should provide their full name, SSN and/or DoD ID Number, any details which may assist in locating records, and their signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United State of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''The Air Force rules for accessing records, contesting contents, and appealing initial agency determinations are published in Air Force Instruction 33–332, Air Force Privacy Program; 32 CFR part 806b; or may be obtained from the system manager.''

RECORD SOURCE CATEGORIES:

Delete entry and replace with ''Military Personnel Data System (MilPDS); correspondence and forms generated in Air Force Disability Division (AF Form 356, Report of Findings of the Physical Evaluation Board; AF form 1180, Action of Physical Evaluation Board Findings and Recommended Disposition); medical treatment facilities (military, civilian, and Department of Veteran's Affairs); Department of Veterans Affairs Rating Boards; Department of Veterans Affairs Compensation and Pension Exams; servicing Military Personnel Section; Air Force Personnel Center Commander; individual whom the record pertains to; individual's commander; Judge Advocate General (JAG) officials; Defense Finance and Accounting Services officials; members of Congress, attorneys; and other interested parties.''

* * * * *

[FR Doc. 2013–05053 Filed 3–4–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF–2013–0011]

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to alter a System of Records.

SUMMARY: The Department of the Air Force proposes to alter a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on April 5, 2013 unless comments are received which result in a contrary determination. Comments will be accepted on or before April 4, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Charles J. Shedrick, Department of the Air Force Privacy Office, Air Force Privacy Act Office, Office of Warfighting Integration and Chief Information Officer, ATTN: SAF/CIO A6, 1800 Air Force Pentagon, Washington, DC 20330–1800, or by phone at (202) 404–6575.

SUPPLEMENTARY INFORMATION: The Department of the Air Force's notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**.

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, were submitted on January 30, 2013 to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996, (February 20, 1996, 61 FR 6427).

Dated: February 28, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F044 AF SG N

SYSTEM NAME:

Physical Fitness File (June 11, 1997, 62 FR 31793).

* * * * *

CHANGES:

SYSTEM ID:

Delete entry and replace with ''F036 AF A1 I.''

SYSTEM NAME:

Delete entry and replace with ''Air Force Fitness Program.''

SYSTEM LOCATION:

Delete entry and replace with ''Air Force Fitness Management System (AFFMS) is located at Defense Enterprise Computing Center Montgomery, 401 E. Moore Dr., Maxwell AFB-Gunter Annex, AL 36114–3004.

Air Force Fitness Management System II (AFFMS II) is located at Air Force Personnel Center Data Center, 499 C. Street West, Randolph AFB, TX 78150–4750. Records are also located at Air Force units of assignment. Official mailing addresses are published as an appendix to the Air Force's compilation of system notices.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Air Force Active Duty, Reserve, and Air National Guard personnel.''

CATEGORIES OF RECORDS IN SYSTEM:

Delete entry and replace with ''Name, Social Security Number (SSN), Department of Defense Identification Number (DoD ID Number), rank, date of birth, duty phone, height, weight, physical fitness test scores, individual fitness reports, fitness screening questionnaire, letters documenting entry and participation in individual fitness rehabilitation programs, medical profile documents, fitness progress reports, scheduled medical evaluations and fitness center appointments, counseling documentation, and administrative actions taken.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 8013, Secretary of the Air Force; Air Force Policy Directive 36–29, Military Standards; Air Force Instruction 36–2905, Fitness Program; Department of Defense Directive 1308.1, Department of Defense Physical Fitness and Body Fat Program; Department of Defense Instruction 1308.3, Department of Defense Physical Fitness and Body Fat Programs Procedures; and E.O. 9397 (SSN), as amended.''

PURPOSE:

Delete entry and replace with ''To document individuals' progress in the Air Force Fitness Program. The file keeps individuals and their leadership informed of fitness levels and progress in improving fitness levels towards achieving minimum Air Force fitness standards.''

* * * * *

STORAGE:

Delete entry and replace with ''Paper records and electronic storage media.''

RETRIEVABILITY:

Delete entry and replace with ''Retrieved by name, SSN and/or DoD ID number.''

SAFEGUARDS:

Delete entry and replace with ''Access to records is limited to person(s) responsible for servicing the record in the performance of their official duties and who are properly screened and cleared for need-to-know. System software uses Primary Key Infrastructure (PKI)/Common Access Card (CAC) authentication to lock out unauthorized access. System software contains authorization/permission partitioning in the form of by-name assigned user roles to limit access to appropriate organization level. Paper records are secured in locked cabinets or drawers when not in use.''

RETENTION AND DISPOSAL:

Delete entry and replace with ''Fitness program case files (paper records) are maintained until individual has sustained a fitness score greater than or equal to 75 percent for 24 consecutive months or 90 days after member's separation or retirement, whichever is sooner. Electronic records are destroyed when the agency determines that the electronic records are superseded, obsolete, and are no longer needed for administrative, legal, audit, or other operational purposes. Paper records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Electronic records are deleted from the system.''

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Chief, Military Force Policy Division, 1040 Air Force Pentagon, Room 4D950, Washington, DC 20330–1040.''

NOTIFICATION PROCEDURES:

Delete entry and replace with ''Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to Commander at the unit of assignment or attachment. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

For verification purposes, individual should provide their full name, SSN and/or DoD ID Number, any details which may assist in locating records, and their signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States:

'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare(or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to records about themselves contained in this system should address requests to the Commander at the unit of assignment or attachment. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

For verification purposes, individual should provide their full name, SSN and/or DoD ID Number, any details which may assist in locating records, and their signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States:

'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare(or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''The Air Force rules for accessing records and for contesting contents and appealing initial agency determinations are published in 32 CFR part 806b, Air Force Instruction 33–332, Air Force Privacy Program and may be obtained from the system manager.''

RECORD SOURCE CATEGORIES:

Delete entry and replace with ''From healthcare providers; individuals who conduct fitness assessments and oversee the unit fitness program; and the individual to whom the record pertains.''

* * * * *

[FR Doc. 2013–05029 Filed 3–4–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID USAF–2013–0015]

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to delete a System of Records.

SUMMARY: The Department of the Air Force is deleting a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on April 5, 2013 unless

comments are received which result in a contrary determination. Comments will be accepted on or before April 4, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Charles J. Shedrick, Department of the Air Force Privacy Office, Air Force Privacy Act Office, Office of Warfighting Integration and Chief Information Officer, ATTN: SAF/CIO A6, 1800 Air Force Pentagon, Washington, DC 20330–1800, or by phone at (571) 256–2515.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**.

The Department of the Air Force proposes to delete one system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: February 28, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletion:

F036 AFPC Q

SYSTEM NAME:

Educational Delay Action Notification (January 12, 2009, 74 FR 1183)

REASON:

Records that document these actions are covered by System of Records Notices (SORNs) F036 AF PC Q, Personnel Data System (PDS) (June 11, 1997, 62 FR 31793) and F036 AF PC C, Military Personnel Records System (October 13, 2000, 65 FR 60916).

Therefore F036 AFPC Q, Educational Delay Action Notification (January 12, 2009, 74 FR 1183) can be deleted.

[FR Doc. 2013–05049 Filed 3–4–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID USAF–2013–0008]

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to alter a System of Records.

SUMMARY: The Department of the Air Force proposes to alter a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on April 5, 2013 unless comments are received which result in a contrary determination. Comments will be accepted on or before April 4, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Charles J. Shedrick, Department of the Air Force Privacy Office, Air Force Privacy Act Office, Office of Warfighting Integration and Chief Information Officer, ATTN: SAF/CIO A6, 1800 Air Force Pentagon, Washington, DC 20330–1800, or by phone at (202) 404–6575.

SUPPLEMENTARY INFORMATION: The Department of the Air Force's notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**.

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, were submitted on January 30, 2013 to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996, (February 20, 1996, 61 FR 6427).

Dated: February 28, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F036 AFPC F

SYSTEM NAME:

Health Education Records (June 11, 1997, 62 FR 31793).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Headquarters, Air Force Personnel Center (AFPC), Chief, Medical Service Officer Utilization Division, 550 C Street W, Randolph Air Force Base, TX 78150–4703.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Air Force Active Duty, Reserve, and Air National Guard personnel.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Add as first paragraph ''Name, Social Security Number (SSN), Department of Defense Identification Number (DoD ID Number) and grade.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 105, Armed Forces Health Professionals Financial Assistance Programs; 10 U.S.C. 9301, Members of Air Force: detail as students, observers, and investigators at educational institutions, industrial plants, and hospitals; and E.O. 9397 (SSN), as amended.''

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with ''In addition to those disclosures generally

permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD Blanket Routine Uses published at the beginning of the Air Force's compilation of systems of records notices may apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974, as amended, or mentioned in this system of records notice.''

* * * * *

STORAGE:

Delete entry and replace with ''Paper records and electronic storage media.''

RETRIEVABILITY:

Delete entry and replace with ''Retrieved by name, SSN and/or DoD ID Number.''

SAFEGUARDS:

Delete entry and replace with ''Records are maintained in file cabinets in the building that are locked and have controlled access entry requirements. Electronic files are only accessed by authorized personnel with secure Common Access Card (CAC) in combination with a Personal Identification Number (PIN) and need-to-know. Environment consists of magnetic keyed cipher locked room within AFPC complex.''

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Chief, Medical Service Officer Utilization Division, Headquarters, Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703.

For verification purposes, individuals should provide their full name, SSN and/or DoD ID Number, any details which may assist in locating records, and their signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States:

'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking to access records about themselves contained in this system should address written requests to the Chief, Medical Service Officer Utilization Division, Headquarters, Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703.

For verification purposes, individuals should provide their full name, SSN and/or DoD ID Number, any details which may assist in locating records, and their signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States:

'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 33–332; Air Force Privacy Program; 32 CFR part 806b; or may be obtained from the system manager.''

RECORD SOURCE CATEGORIES:

Delete entry and replace with ''Member's Air Force Form 63, Active Duty Service Commitment (ADSC) Acknowledgement Statement; Member's application; supervisor's evaluation; master personnel records (board use only); Career Brief (board use only); transcripts; test scores; Deans' letters of recommendation; Standard Form (SF) 88, Report of Medical Examination; and SF 93, Report of Medical History.''

* * * * *

[FR Doc. 2013–05030 Filed 3–4–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID USAF–2013–0010]

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to alter a System of Records.

SUMMARY: The Department of the Air Force proposes to alter a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on April 5, 2013 unless comments are received which result in a contrary determination. Comments will be accepted on or before April 4, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Charles J. Shedrick, Department of the Air Force Privacy Office, Air Force Privacy Act Office, Office of Warfighting Integration and Chief Information Officer, ATTN: SAF/CIO A6, 1800 Air Force Pentagon, Washington, DC 20330–1800, or by phone at (202) 404–6575.

SUPPLEMENTARY INFORMATION: The Department of the Air Force's notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from

the address in **FOR FURTHER INFORMATION CONTACT**.

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, were submitted on January 31, 2013 to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: February 28, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F010 AFMC

SYSTEM NAME:

Deliberate and Crisis Action Planning and Execution Segment (DCAPES) Records (July 2, 2009, 74 FR 31721)

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Air Force Active Duty, Reserve, Air National Guard personnel, and government civilians. Records are maintained on individuals who are projected to depart or departed on Temporary Duty (TDY) in support of contingency, crisis or manning assist deployments.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Name, Social Security Number (SSN), Department of Defense Identification Number (DoD ID Number), grade, home address, and geographical location.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 8013, Secretary of the Air Force; 10 U.S.C. 8032, The Air Staff, general duties; Air Force Policy Directive 10–4, Operations Planning Air & Space Expeditionary Force Presence Policy; Air Force Instruction 10–401, Air Force Operations Planning & Execution; Air Force Instruction 10–403, Deployment Planning & Execution; Air Force Instruction 36–3802, Personnel Readiness; and E.O. 9397 (SSN), as amended.''

PURPOSE(S):

Delete entry and replace with ''Deliberate and Crisis Action Planning and Execution Segments (DCAPES) is the United States Air Forces system of records for managing Operational Plan requirements. The system integrates automated decision support applications and information exchange capabilities to provide the Air Force the means to plan, present, source, mobilize, deploy, account for, sustain, redeploy, and reconstitute forces. Records are collected to allow the Air Force to assign personnel to deployment requirements and create official contingency, exercise and deployment (CED) travel orders for Air Force personnel and to respond to authorized internal and external requests for data relating to Air Force CED travel.''

* * * * *

STORAGE:

Delete entry and replace with ''Paper or electronic storage media.''

RETRIEVABILITY:

Delete entry and replace with ''By name, SSN and/or DoD ID Number.''

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with ''Electronic records are maintained for the duration of an operation period then are automatically moved to inactive files. Inactive files are deleted after 30 days by the Air Force Personnel Center, Air and Space Expeditionary Force Operations. Paper records are destroyed by tearing into pieces, shredding, pulping, macerating or burning.''

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Program Manager (PM), Business and Enterprise Systems, 200 East Moore Drive, Building 856, Maxwell AFB, Gunter Annex, Montgomery, AL 36114–3004.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to the PM, Business and Enterprise Systems, Decision Support Branch, 200 East Moore Drive, Building 856, Maxwell AFB, Gunter Annex, Montgomery, AL 36114–3004.

For verification purposes, individual should provide their full name, SSN and/or DoD ID Number, current mailing address, any details which may assist in locating records, and their signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States:

'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system should address inquiries to the PM, Business and Enterprise Systems, 200 East Moore Drive, Decision Support Branch, Building 856, Maxwell AFB, Gunter Annex, Montgomery, AL 36114–3004.

For verification purposes, individual should provide their full name, SSN and/or DoD ID Number, current mailing address, any details which may assist in locating records, and their signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States:

'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.''

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with ''Information obtained from automated external system interfaces. The interfaces are the Air Force Logistics Module, Air Force Military Personnel Data System, Air Force Civilian Personnel Data System, Air Force Personnel Center/Agile Force Accountability Scanner and the Joint Operational Planning and Execution System.''

* * * * *

[FR Doc. 2013–05032 Filed 3–4–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID USAF–2013–0009]

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to alter a System of Records.

SUMMARY: The Department of the Air Force proposes to alter a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on April 5, 2013 unless comments are received which result in a contrary determination. Comments will be accepted on or before April 4, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Charles J. Shedrick, Department of the Air Force Privacy Office, Air Force Privacy Act Office, Office of Warfighting Integration and Chief Information Officer, ATTN: SAF/CIO A6, 1800 Air Force Pentagon, Washington, DC 20330–1800, or by phone at (202) 404–6575.

SUPPLEMENTARY INFORMATION: The Department of the Air Force's notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**.

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act, as amended, were submitted on January 30, 2013 to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996, (February 20, 1996, 61 FR 6427).

Dated: February 28, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F036 AF PC J

SYSTEM NAME:

Absentee and Deserter Information Files (June 11, 1997, 62 FR 31793).

CHANGES:

SYSTEM ID:

Delete entry and replace with ''F036 AFPC G.''

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Air Force Personnel Center (AFPC), Missing Persons Division, 550 C Street West, Suite 14, Randolph Air Force Base, TX 78150–4716;

Air Reserve Personnel Center, Denver, 18420 East Silver Creek Avenue, Building 390, 68 Buckley Air Force Base, CO 80011–9502;

National Personnel Records Center, Military Personnel Branch, 1 Archives Drive, St. Louis, MO 63138–1002.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Air Force active duty, Reserve, Air National Guard personnel who have been identified as being absent without leave or deserter.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Name, Social Security Number (SSN), Department of Defense Identification Number (DoD ID Number), Rank/Grade, date of birth, place of birth, height, weight, eye color, hair color, residence address, organization and installation, branch of service, sex, race, ethnicity, current enlistment, time of absence, administrative date of desertion, operator's driver license and member's vehicle information; information currently on file pertaining to family members or associates of the deserter or absentee, circumstance of absentee's return and disposition, organization's commander signature.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C., 8013, Secretary of the Air Force; 10 U.S.C. Sections 885, Desertion, 886, Absence Without Leave, and 887, Missing Movement (UCMJ Articles 85, 86, and 87); DoDD 1325.2, Desertion and Unauthorized Absence; Air Force Instruction 36–2911, Desertion and Unauthorized Absence; and E.O. 9397 (SSN), as amended.''

PURPOSE(S):

Delete entry and replace with ''To support the Air Force Unauthorized Absence (Absent Without Leave/Deserter) Program. Used to ensure positive identification and expeditious reporting of service members who have been classified as Absent Without Leave (AWOL)/Deserters to law enforcement, financial, and leadership in order to return members to military custody. Documents commander's actions which may be used for support in personnel and pay actions.''

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with ''In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD Blanket Routine Uses published at the beginning of the Air Force's compilation of systems of records notices may apply to this system.''

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

STORAGE:

Delete entry and replace with ''Paper records maintained in file folders, binders, and electronic storage media.''

RETRIEVABILITY:

Delete entry and replace with ''Name, SSN and/or DoD ID number.''

SAFEGUARDS:

Delete entry and replace with ''Files are accessed by Air Force AWOL/Deserter Program Manager and personnel cleared for need-to-know. Records are stored in file cabinets in buildings that are either locked or have controlled access entry requirements. Electronic files are accessed by authorized personnel only who have a secure Common Access Card (CAC) and an official need-to-know.''

RETENTION AND DISPOSAL:

Delete entry and replace with ''DD Form 553, Deserter/Absentee Wanted by the Armed Forces and related records

are maintained until absentee is returned to military control, then DD Form 616, Report of Return of Absentee, is accomplished; both forms are then filed in Master Personnel Record Group for permanent retention. Paper records are destroyed after electronic copy has been created and filed or when no longer needed for revision, dissemination, or reference, whichever is later.

Electronic records replace temporary paper records and are created using electronic mail and word processing. Electronic records are destroyed when the agency determines records are superseded, obsolete, or no longer needed for administrative, legal, audit, or other operational purposes.''

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Air Force Absent without Leave/Deserter Program Manager, Air Force Personnel Center, Missing Persons Division, 550 C Street West, Suite 14, Randolph Air Force Base, TX 78150–4716.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to Air Force AWOL/Deserter Program Manager, Air Force Personnel Center, Missing Persons Division, 550 C Street West, Suite 14, Randolph Air Force Base, TX 78150–4716.

For verification purposes, individual should provide their full name, SSN and/or DoD ID Number, any details which may assist in locating records, and their signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C., 1746, in the following format:

If executed outside the United States:

'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system should address written inquiries to AWOL/Deserter Program Manager, Air Force Personnel Center, Missing Persons Division, 550 C Street West, Suite 14, Randolph Air Force Base, TX 78150–4716.

For verification purposes, individual should provide their full name, SSN and/or DoD ID Number, any details which may assist in locating records, and their signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C., 1746, in the following format:

If executed outside the United States:

'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare(or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.''

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with ''Information is obtained from the Air Force Military Personnel Data System; Unit Commanders/First Sergeants; Force Support Squadron representatives; military and civilian law enforcement officials; DD Form 553, Deserter/Absentee Wanted by the Armed Forces; DD Form 616, Report of Return of Absentee; and anyone who may report information concerning an absentee wanted by the Armed Forces.''

* * * * *

[FR Doc. 2013–05031 Filed 3–4–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID USN–2013–0004]

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to delete a System of Records.

SUMMARY: The Department of the Navy is deleting a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on April 5, 2013 unless comments are received which result in a contrary determination. Comments will be accepted on or before April 4, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.*

Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Patterson, HEAD, FOIA/Privacy Act Policy Branch, Department of the Navy, 2000 Navy Pentagon, Washington, DC 20350–2000, or by phone at (202) 685–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: February 28, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletion:

N06310–1

SYSTEM NAME:

Reports of Injury/Illness for Personnel on MSC Ships (February 22, 1993, 58 FR 10794).

Reason: The Department of the Navy (DON) has determined that N05880–2, Admiralty Claims Files (May 9, 2003, 68 FR 24959) maintains all OJAG records relevant to admiralty claims. Therefore, N06310–1, Reports of Injury/Illness for Personnel on MSC Ships (February 22, 1993, 58 FR 10794) can be deleted.

[FR Doc. 2013–05058 Filed 3–4–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID USN–2013–0003]

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to alter a System of Records.

SUMMARY: The Department of the Navy proposes to alter a system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on April 5, 2013 unless comments are received which result in a contrary determination. Comments will be accepted on or before April 4, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Patterson, HEAD, FOIA/Privacy Act Policy Branch, Department of the Navy, 2000 Navy Pentagon, Washington, DC 20350–2000, or by phone at (202) 685–6546.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**. The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on February 7, 2013, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: February 28, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N05861–1

SYSTEM NAME:

Private Relief Legislation (April 1, 2008, 73 FR 17331).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Office of Legislative Affairs, Department of the Navy, 1300 Navy Pentagon, Washington, DC 20350–2000.''

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Letters to Congressional Committees, expressing the views of the department concerning the legislation and records necessary to prepare the letters. Collected information may include name, address, phone number, birth date, and Social Security Number (SSN).''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 5013, Secretary of the Navy, and E.O. 9397 (SSN), as amended.''

* * * * *

STORAGE:

Delete entry and replace with ''Paper records and electronic storage media.''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Chief of Legislative Affairs, Department of the Navy, 1300 Navy Pentagon, Washington, DC 20350–2000.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Chief of Legislative Affairs, Department of the Navy, 1300 Navy Pentagon, Washington, DC 20350–2000.

Individual should provide a signed request with their full name, the term and session of Congress when the bill was introduced, the bill number, the sponsor of the bill (if available), and a copy of their driver's license or similar substitute for identification purposes.

The system manager may require an original signature or a notarized signature as a means of proving the identity of the individual requesting access to the records.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system should address written inquiries to the Chief of Legislative Affairs, Department of the Navy, 1300 Navy Pentagon, Washington, DC 20350–2000.

Individual should provide a signed request with their full name, the term and session of Congress when the bill was introduced, the bill number, the sponsor of the bill (if available), and a copy of their driver's license or similar substitute for identification purposes.

The system manager may require an original signature or a notarized signature as a means of proving the identity of the individual requesting access to the records.''

* * * * *

[FR Doc. 2013–05059 Filed 3–4–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

President's Board of Advisors on Historically Black Colleges and Universities

AGENCY: U.S. Department of Education.

ACTION: Notice; Advisory Committee Meeting Cancellation.

SUMMARY: The Department of Education gives notice of the cancellation of the meeting of the President's Board of Advisors on Historically Black Colleges and Universities scheduled for March 6, 2013, and announced in the **Federal Register** on February 20, 2013, in Vol. 78 No. 34.

The meeting will be rescheduled for a date to be announced in the future.

FOR FURTHER INFORMATION CONTACT: John P. Brown, Designated Federal Official, President's Board of Advisors on Historically Black Colleges and Universities, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202. Email *john.brown@ed.gov:* Telephone: (202) 453–5645.

Martha Kanter,

Under Secretary, U.S. Department of Education.

[FR Doc. 2013–05001 Filed 3–4–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC13–75–000.
Applicants: Wolverine Power Supply Cooperative, Inc., Wisconsin Electric Power Company.
Description: Wolverine Power Supply Cooperative, Inc. et al Application for Authorization for Disposition of Jurisdictional Facilities Pursuant to Federal Power Act Section 203 & Request for limited Waivers & Confidential Treatment.
Filed Date: 2/22/13.
Accession Number: 20130222–5142.
Comments Due: 5 p.m. ET 3/15/13.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–513–006.
Applicants: PJM Interconnection, L.L.C.
Description: Compliance filing per 1/31/2013 Order accepting Settlement Agreement in ER12–513 to be effective 1/31/2013.
Filed Date: 2/22/13.
Accession Number: 20130222–5077.
Comments Due: 5 p.m. ET 3/15/13.

Docket Numbers: ER13–973–000.
Applicants: Saja Energy LLC.
Description: Market-Based Rates application to be effective 2/23/2013.
Filed Date: 2/22/13.
Accession Number: 20130222–5106.
Comments Due: 5 p.m. ET 3/15/13.

Docket Numbers: ER13–974–000.
Applicants: Dynegy Midwest Generation, LLC.
Description: Revised Rate Schedule to be effective 12/31/1998.
Filed Date: 2/22/13.
Accession Number: 20130222–5115.
Comments Due: 5 p.m. ET 3/15/13.

Docket Numbers: ER13–975–000.
Applicants: Pacific Gas and Electric Company.
Description: Western's WPA (Cottonwood Phase 2), Rate Schedule FERC No 228 to be effective 2/25/2013.
Filed Date: 2/22/13.
Accession Number: 20130222–5123.
Comments Due: 5 p.m. ET 3/15/13.

Docket Numbers: ER13–976–000.
Applicants: Arizona Public Service Company.
Description: Arizona Public Service files Navajo Generating Station Operating Agreement to be effective 4/23/2013.
Filed Date: 2/22/13.
Accession Number: 20130222–5128.
Comments Due: 5 p.m. ET 3/15/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 25, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–04925 Filed 3–4–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP13–579–000.
Applicants: National Fuel Gas Supply Corporation.
Description: Fuel Tracker (04/01/13) to be effective 4/1/2013.
Filed Date: 2/22/13.
Accession Number: 20130222–5095.
Comments Due: 5 p.m. ET 3/6/13.

Docket Numbers: RP13–580–000.
Applicants: National Fuel Gas Supply Corporation.
Description: Market Pooling Points (Feb 2013) to be effective 12/31/1998.
Filed Date: 2/22/13.
Accession Number: 20130222–5105.
Comments Due: 5 p.m. ET 3/6/13.

Docket Numbers: RP13–581–000.
Applicants: Guardian Pipeline, L.L.C.
Description: Rate Schedule OSS and Rate Schedule LBS Update to be effective 4/1/2013.
Filed Date: 2/25/13.
Accession Number: 20130225–5087.
Comments Due: 5 p.m. ET 3/11/13.

Docket Numbers: RP13–582–000.
Applicants: Guardian Pipeline, L.L.C.
Description: Negotiated Rate Agreements—Wisconsin Public Service Corp to be effective 4/1/2013.
Filed Date: 2/25/13.
Accession Number: 20130225–5089.
Comments Due: 5 p.m. ET 3/11/13.

Docket Numbers: RP13–583–000.
Applicants: Petal Gas Storage, L.L.C.
Description: Compliance Filing in CP12–464–000—Hattiesburg Roll-In to be effective 3/28/2013.
Filed Date: 2/26/13.
Accession Number: 20130226–5035.
Comments Due: 5 p.m. ET 3/11/13.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 26, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–04924 Filed 3–4–13; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9784–8; EPA–HQ–OARM–2013–0041]

Public Availability of Environmental Protection Agency FY 2012 Service Contract Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public availability of FY 2012 Service Contract Inventories.

SUMMARY: In accordance with Section 743 of Division C of the Consolidated Appropriations Act of 2010 (Pub. L. 111–117), The Environmental Protection Agency is publishing this notice to advise the public of the availability of the FY 2012 Service Contract Inventory. This inventory provides information on service contract actions over $25,000

that were made in FY 2012. The information is organized by function to show how contracted resources are distributed throughout the agency. The inventory has been developed in accordance with guidance issued by the Office of Management and Budget's Office of Federal Procurement Policy (OFPP), *Service Contract Inventories (December 19, 2011).* The Environmental Protection Agency has posted its inventory and a summary of the inventory on the EPA's homepage at the following link: *http://www.epa.gov/oam/inventory/inventory.htm.*

FOR FURTHER INFORMATION CONTACT: Questions regarding the service contract inventory should be directed to Linear Cherry in the Office of Acquisition Management, Headquarters Procurement Operations Division (3803R), Business Analysis and Strategic Sourcing, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: 202–564–4403; email address: *cherry.linear@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

How can I get copies of this docket and other related information?

1. The EPA has established a docket for this action under Docket ID No. EPA–HQ–OARM–2013–0041. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the FY 2012 Service Contract Inventory Docket in the EPA Docket Center, (EPA/DC) 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 FY 2012 Service Contract Inventory Docket is (202) 566–1752.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.*

Dated: February 8, 2013.

John R. Bashista,

Director, Office of Acquisition Management.

[FR Doc. 2013–05097 Filed 3–4–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9786–6]

Notification of a Public Meeting of the Science Advisory Board Chemical Assessment Advisory Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA or agency) Science Advisory Board (SAB) Staff Office announces a public meeting of the SAB Chemical Assessment Advisory Committee (CAAC) to receive a briefing about the Integrated Risk Information System (IRIS) program and enhancements to the process for developing IRIS toxicological reviews for chemicals.

DATES: The SAB CAAC meeting dates are Tuesday April 2, 2013 from 9 a.m. to 5:00 p.m. (Eastern Time) and Wednesday April 3, 2013 from 8:30 a.m. to 1:00 p.m. (Eastern Time).

ADDRESSES: The meeting will be held at the Washington Marriott Hotel, 1221 22nd Street, Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Members of the public who wish to obtain further information regarding this announcement may contact Dr. Suhair Shallal, Designated Federal Officer (DFO), SAB Staff Office, by telephone/voice mail at (202) 564–2057 or via email at *shallal.suhair@epa.gov.* General information concerning the EPA SAB can be found at *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION:

Background: The SAB was established pursuant to the Environmental Research, Development, and Demonstration Authorization Act (ERDDAA) codified at 42 U.S.C. 4365, to provide independent scientific and technical peer review, advice, consultation and recommendations to the EPA Administrator on the technical basis for EPA actions. As a Federal Advisory Committee, the SAB conducts business in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2) and related regulations. Pursuant to FACA and EPA policy, notice is hereby given that the SAB Chemical Assessment Advisory Committee (CAAC) will hold a public meeting to learn about the EPA's Office of Research and Development (ORD) Integrated Risk Information System (IRIS) program and the development of toxicological reviews for chemicals. The SAB committee will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

EPA's ORD has requested that the SAB conduct peer reviews of selected IRIS chemical toxicological reviews. The SAB CAAC will be augmented, as needed, with additional subject matter experts to provide advice regarding IRIS toxicological reviews through the chartered SAB. Prior to the beginning of their peer review activities, the CAAC is meeting to learn more about the IRIS program and the process for developing IRIS toxicological reviews for chemicals. The SAB Staff Office previously requested public nominations of experts to serve on the SAB committee in two **Federal Register** notices published on November 18, 2011 and August 29, 2012 (76 FR 223 pp. 71561–62; 77 FR 168 pp. 52330–31, respectively). Information about the formation of this SAB committee can be found on the SAB Web site at *http://yosemite.epa.gov/sab/sabproduct.nsf/WebAll/nominationcommittee?OpenDocument.*

Availability of the review materials: Information about this public meeting will be available on the SAB Web site (*http://www.epa.gov/sab*) prior to the meeting. Meeting materials can be accessed by using the ''calendar'' link in the blue navigation sidebar and then clicking on the date corresponding to the meeting date.

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office. Federal advisory committees and panels, including scientific advisory committees, provide independent advice to EPA. Members of the public can submit relevant comments pertaining to the committee's charge, meeting materials and/or the group conducting the activity. Input from the public to the SAB will have the most impact if it consists of comments that provide specific scientific or technical information or analysis for the SAB committee to consider or if it relates to the clarity or accuracy of the technical information. Members of the public wishing to provide comment should contact the Designated Federal Officer for the relevant advisory committee directly.

Oral Statements: In general, individuals or groups requesting an oral presentation will be limited to five minutes per speaker. Interested parties should contact Dr. Suhair Shallal, DFO, in writing (preferably via email), at the contact information noted above, by

March 25, 2013 to be placed on the list of public speakers for the meeting.

Written Statements: Written statements should be received in the SAB Staff Office by March 25, 2013 so that the information may be made available to the SAB Committee for consideration. Written statements should be supplied to the DFO in electronic format via email (acceptable file formats: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format). It is the SAB Staff Office general policy to post written comments on the web page for the advisory meeting or teleconference. Submitters are requested to provide an unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its Web sites. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the SAB Web site. Copyrighted material will not be posted without explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities, please contact Dr. Suhair Shallal at the phone number or email address noted above, preferably at least ten days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: February 21, 2013.

Thomas H. Brennan,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2013–05106 Filed 3–4–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9787–5]

Proposed CERCLA Settlement Relating to the 1244 White Drive Site in North Brunswick, Middlesex County, NJ

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Administrative Settlement and Opportunity for Public Comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), notice is hereby given by the U.S. Environmental Protection Agency (''EPA''), Region 2, of a proposed Administrative Settlement Agreement for Recovery of Past Response Costs (''Agreement'') pursuant to Section 122(h)(1) of CERCLA, with Rusony Shiau and Katrina Shiau (''Settling Parties''). The Settling Parties are potentially responsible parties, pursuant to Section 107(a) of CERCLA, and thus are potentially liable for response costs incurred at or in connection with the 1244 White Drive Site (''Site''), located in North Brunswick, Middlesex County, New Jersey. Under the Agreement, the Settling Parties agree to pay a total of $429,783.54 to EPA for past response costs over a period of three years with most of that money coming from the sale of seven properties that the Settling Parties own. The Settling Parties will pay the money in accordance with the following schedule. Within 30 days of the effective date of the Settlement Agreement, the Settling Parties will pay EPA 10% ($42,978.35) of the total leaving a balance of $386,805.19. Within three years of the effective date of the Settlement Agreement, the Settling Parties will sell the seven properties that they own and pay EPA 60% of the net proceeds from the sale of each of the seven properties until the balance of $386,805.19 is paid in full. In the event that any balance remains due after the sale of the seven properties the remaining balance will be paid out of the Settling Parties' estates. EPA will consider all comments received and may modify or withdraw its consent to the Agreement if comments received disclose facts or considerations that indicate that the proposed Agreement is inappropriate, improper, or inadequate. EPA's response to any comments received will be available for public inspection at EPA Region 2 offices, 290 Broadway, New York, New York 10007–1866.

DATES: Comments must be provided by April 4, 2013.

ADDRESSES: The Agreement is available for public inspection at EPA Region 2 offices at 290 Broadway, New York, New York 10007–1866. Comments should reference the 1244 White Drive Site, located in North Brunswick, Middlesex County, New Jersey, Index No. CERCLA–02–2013–2004. To request a copy of the Agreement, please contact the EPA employee identified below.

FOR FURTHER INFORMATION CONTACT: Gerard Burke, Assistant Regional Counsel, New Jersey Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 290 Broadway—17th Floor, New York, New York 10007–1866. Telephone: 212–637–3120, email at *burke.gerard@epa.gov.*

Dated: February 13, 2013.

Walter E. Mugdan,

Director, Emergency and Remedial Response Division.

[FR Doc. 2013–05099 Filed 3–4–13; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Sunshine Act Meetings Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act, of the regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on March 14, 2013, from 9:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Dale L. Aultman, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matter to be considered at the meeting is:

Open Session

A. Approval of Minutes

- February 14, 2013

B. New Business

- Liquidity and Funding—Final Rule

C. Report

- Ethics Quarterly Report

Dated: *March 1, 2013.*

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2013–05224 Filed 3–1–13; 4:15 pm]

BILLING CODE 6705–01–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS13–05]

Appraisal Subcommittee; Notice of Meeting

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

ACTION: Notice of Meeting.

Description

In accordance with Section 1104 (b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, notice is hereby given that the Appraisal Subcommittee (ASC) will meet in open session for its regular meeting:

Location: OCC—400 7th Street SW., Washington, DC 20024.

Date: March 13, 2013.

Time: 10:30 a.m.

Status: Open

Matters to be Considered

Summary Agenda

February 13, 2013 minutes—Open Session

(No substantive discussion of the above items is anticipated. These matters will be resolved with a single vote unless a member of the ASC requests that an item be moved to the discussion agenda.)

Discussion Agenda

Appraisal Complaint National Hotline

Illinois Compliance Review

How to Attend and Observe an ASC Meeting

Email your name, organization and contact information to *meetings@asc.gov.*

You may also send a written request via U.S. Mail, fax or commercial carrier to the Executive Director of the ASC, 1401 H Street NW., Ste 760, Washington, DC 20005. The fax number is 202–289–4101. Your request must be received no later than 4:30 p.m., ET, on the Monday prior to the meeting. Attendees must have a valid government-issued photo ID and must agree to submit to reasonable security measures. The meeting space is intended to accommodate public attendees. However, if the space will not accommodate all requests, the ASC may refuse attendance on that reasonable basis. The use of any video or audio tape recording device, photographing device, or any other electronic or mechanical device designed for similar purposes is prohibited at ASC meetings.

Dated: February 28, 2013.

James R. Park,

Executive Director.

[FR Doc. 2013–05024 Filed 3–4–13; 8:45 am]

BILLING CODE P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS13–06]

Appraisal Subcommittee; Notice of Meeting

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

ACTION: Notice of Meeting.

Description: In accordance with Section 1104 (b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, notice is hereby given that the Appraisal Subcommittee (ASC) will meet in closed session:

Location: OCC—400 7th Street SW., Washington, DC 20024.

Date: March 13, 2013.

Time: Immediately following the ASC open session.

Status: Closed

Matters To Be Considered:

February 13, 2013 minutes—Closed Session

Preliminary discussion of State Compliance Reviews

Dated: February 28, 2013.

James R. Park,

Executive Director.

[FR Doc. 2013–05023 Filed 3–4–13; 8:45 am]

BILLING CODE 6700–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 20, 2013.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *The Bill and Twylah Horne Irrevocable Trust, and Bill J. Horne, Jr., both of Ada, Oklahoma; Twylah Jenonne Kesler, Edmond, Oklahoma; and Jeanetta Bagwell,* Ada, Oklahoma; as trustees and members to the Vision Bancshares, Inc. Voting Agreement, to retain voting shares of Vision Bancshares, Inc., and thereby indirectly retain voting shares of Vision Bank, National Association, both in Ada, Oklahoma.

Board of Governors of the Federal Reserve System, February 28, 2013.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2013–05009 Filed 3–4–13; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 29, 2013.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Midwest Bancshares, Inc.,* Tyndall, South Dakota; to acquire 100 percent of

the voting shares of Commercial Bank of Minnesota, Heron Lake, Minnesota.

In connection with this application, Applicant also has applied to acquire Risk Management Partners, Inc., Heron Lake, Minnesota, and thereby engage *de novo* in general insurance agency activities in a town with a population not exceeding 5,000, pursuant to section 225.28(b)(11)(iii)(A).

Board of Governors of the Federal Reserve System, February 28, 2013.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2013–05008 Filed 3–4–13; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission (''Commission'' or ''AFTC'').

ACTION: Notice.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management and Budget (''OMB'') for review, as required by the Paperwork Reduction Act (''PRA''). The FTC seeks public comments on its proposal to extend through April 30, 2016 the current PRA clearance for information collection requirements contained in its Alternative Fuels Rule (''Rule''). That clearance expires on April 30, 2013.

DATES: Comments must be submitted on or before April 4, 2013.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Paperwork Comment: FTC File No. P134200'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/altfuelspra2* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex J), 600 Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements for the Alternative Fuels Rule should be addressed to Hampton Newsome, Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, Room M–8102B, 600 Pennsylvania Avenue NW., Washington, DC 20580, (202) 326–2889.

SUPPLEMENTARY INFORMATION:

Title: Alternative Fuels Rule, 16 CFR Part 309.

OMB Control Number: 3084–0094.

Type of Review: Extension of currently approved collection.

Abstract: The Rule, which implements the Energy Policy Act of 1992, Public Law 102–486, requires disclosure of specific information on labels posted on fuel dispensers for non-liquid alternative fuels and on labels on Alternative Fueled Vehicles (AFVs). To ensure the accuracy of these disclosures, the Rule also requires that sellers maintain records substantiating product-specific disclosures they include on these labels.

It is common practice for alternative fuel industry members to determine and monitor fuel ratings in the normal course of their business activities. This is because industry members must determine the fuel ratings of their products in order to monitor quality and to decide how to market them. ''Burden'' for PRA purposes is defined to exclude effort that would be expended regardless of any regulatory requirement. 5 CFR 1320.2(b)(2). Moreover, as originally anticipated when the Rule was promulgated in 1995, many of the information collection requirements and the originally-estimated hours were associated with one-time start up tasks of implementing standard systems and processes.

Other factors also limit the burden associated with the Rule. Certification may be a one-time event or require only infrequent revision. Disclosures on electric vehicle fuel dispensing systems may be useable for several years. Nonetheless, there is still some burden associated with posting labels. There also will be some minimal burden associated with new or revised certification of fuel ratings and recordkeeping. The burden on vehicle manufacturers is limited because only newly-manufactured vehicles will require label posting and manufacturers produce very few new models each year.

On December 10, 2012, the Commission sought comment on the information collection requirements and staff's PRA burden estimates associated with the Rule (''December 10, 2012 Notice''). 77 FR 73467. No comments were received.

Estimated Annual Burden: [1]

Hours: 52,272 (2,240 hours for non-liquid alternative fuels + 50,032 hours for AFV manufacturers)

Labor Costs: $1,090,918 ($55,756 for non-liquid alternative fuels + $1,035,162 for AFV manufacturers)

Non-Labor Cost: $570,813 ($813 for non-liquid alternative fuels + $570,000 for AFV manufacturers and sellers of used AFVs)

Pursuant to the OMB regulations, 5 CFR Part 1320, that implement the PRA, 44 U.S.C. 3501 *et seq.,* the FTC is providing a second opportunity for the public to comment while seeking OMB approval to renew the pre-existing clearance for the Rule.

Request for Comment: You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before April 4, 2013. Write ''Paperwork Comment: FTC File No. P134200'' on your comment. Your comment B including your name and your state B will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment doesn't include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment doesn't include any sensitive health information, like medical records or other individually identifiable health information. In addition, don't include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential * * *, '' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). If you want the Commission to give your comment confidential treatment, you must file it in paper

[1] The calculations underlying these estimates are detailed in the related December 10, 2012 Notice.

See 77 FR at 73468. The non-labor cost estimate shown here, however, contains minor corrections for the calculation regarding AFV manufacturers and sellers of used AFVs and, accordingly, the cumulative non-labor cost total for all respondents. Based on an estimated 1,500,000 new and used AFVs each year at thirty-eight cents for each label (per industry sources), estimated annual AFV labeling cost is $570,000 ($0.38 × 1,500,000); total non-labor cost would thus be $570,813.

form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c). Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online, or to send them to the Commission by courier or overnight service. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/altfuelspra2,* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Paperwork Comment: FTC File No. P134200'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex J), 600 Pennsylvania Avenue NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before April 4, 2013. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Comments on the information collection requirements subject to review under the PRA should additionally be submitted to OMB. If sent by U.S. mail, they should be addressed to Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission, New Executive Office Building, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503. Comments sent to OMB by U.S. postal mail, however, are subject to delays due to heightened security precautions. Thus, comments instead should be sent by facsimile to (202) 395–5167.

David C. Shonka,

Acting General Counsel.

[FR Doc. 2013–05070 Filed 3–4–13; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Statement of Delegation of Authority; Health Resources and Services Administration and Centers for Disease Control and Prevention

I hereby delegate to the Administrator, Health Resources and Services Administration (HRSA), and the Director, Centers for Disease Control and Prevention (CDC), with authority to redelegate, the authority vested in the Secretary of the Department of Health and Human Services under Title III, Part R, Section 399BB, titled ''Autism, Education, Early Detection, and Intervention,'' of the Public Health Service (PHS) Act, as amended, insofar as such authority pertains to the functions of HRSA and CDC, respectively. HRSA and CDC will coordinate and collaborate with each other, with the National Institutes of Health (NIH), and with the Administration for Children and Families (ACF), as appropriate, in implementing this authority. In addition, nothing in this delegation of authority would preclude NIH from pursuing research and training activities authorized by the PHS Act. HRSA and CDC will also coordinate and collaborate with other agencies, as appropriate, in implementing this authority.

This delegation excludes the authority to issue regulations, to establish advisory committees and councils and appoint their members, and shall be exercised in accordance with the Department's applicable policies, procedures, and guidelines.

I hereby affirm and ratify any actions taken by the Administrator, HRSA, the Director, CDC, or other HRSA and CDC officials, which involve the exercise of these authorities prior to the effective date of this delegation.

This delegation is effective upon date of signature.

Dated: February 22, 2013.

Kathleen Sebelius,

Secretary.

[FR Doc. 2013–04946 Filed 3–4–13; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Interest Rate on Overdue Debts

Section 30.18 of the Department of Health and Human Services' claims collection regulations (45 CFR part 30) provides that the Secretary shall charge an annual rate of interest, which is determined and fixed by the Secretary of the Treasury after considering private consumer rates of interest on the date that the Department of Health and Human Services becomes entitled to recovery. The rate cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the ''Schedule of Certified Interest Rates with Range of Maturities'' unless the Secretary waives interest in whole or part, or a different rate is prescribed by statute, contract, or repayment agreement. The Secretary of the Treasury may revise this rate quarterly. The Department of Health and Human Services publishes this rate in the **Federal Register**.

The current rate of 10⅝%, as fixed by the Secretary of the Treasury, is certified for the quarter ended December 31, 2012. This interest rate is effective until the Secretary of the Treasury notifies the Department of Health and Human Services of any change.

Dated: February 25, 2013.

Margie Yanchuk,

Director, Office of Financial Policy and Reporting.

[FR Doc. 2013–04945 Filed 3–4–13; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Subcommittee for Dose Reconstruction Reviews (SDRR), Advisory Board on Radiation and Worker Health (ABRWH or the Advisory Board), National Institute for Occupational Safety and Health (NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting for the aforementioned subcommittee:

Time and Date: 9:00 a.m.–5:00 p.m. Eastern Time, March 25, 2013.

Place: Cincinnati Airport Marriott, 2395 Progress Drive, Hebron, Kentucky

41018, Telephone (859) 334–4611, Fax (859) 334–4619.

Status: Open to the public, but without an oral public comment period.

The USA toll-free, dial-in number is 1–866–659–0537 with a pass code of 9933701.

Background: The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines that have been promulgated by the Department of Health and Human Services (HHS) as a final rule; advice on methods of dose reconstruction, which have also been promulgated by HHS as a final rule; advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program; and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC).

In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, and will expire on August 3, 2013.

Purpose: The Advisory Board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class. The Subcommittee for Dose Reconstruction Reviews was established to aid the Advisory Board in carrying out its duty to advise the Secretary, HHS, on dose reconstruction.

Matters To Be Discussed: The agenda for the Subcommittee meeting includes: dose reconstruction program quality management and assurance activities, including: Current findings from NIOSH internal dose reconstruction blind reviews; discussion of dose reconstruction cases under review (sets 8–9, Savannah River Site, Rocky Flats Plant, and Los Alamos National Laboratory cases from sets 10–13); and selection of ''blind dose reconstructions'' from set 16.

The agenda is subject to change as priorities dictate.

In the event an individual cannot attend, written comments may be submitted. Any written comments received will be provided at the meeting and should be submitted to the contact person below well in advance of the meeting.

Contact Person for More Information: Theodore Katz, Designated Federal Official, NIOSH, CDC, 1600 Clifton Road, Mailstop E–20, Atlanta, Georgia 30333, Telephone (513) 533–6800, Toll Free 1 (800) CDC–INFO, email *ocas@cdc.gov*.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dana Redford,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2013–04969 Filed 3–4–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0777]

Adrian Vela: Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (the FD&C Act) debarring Adrian Vela for a period of 5 years from importing articles of food or offering such articles for importation into the United States. FDA bases this order on a finding that Mr. Vela was convicted of three felony counts under Federal law for conduct relating to the importation into the United States of an article of food. Mr. Vela was given notice of the proposed debarment and an opportunity to request a hearing within the timeframe prescribed by regulation. As of November 3, 2012 (30 days after receipt of the notice), Mr. Vela had not responded. Mr. Vela's failure to respond constitutes a waiver of his right to a hearing concerning this action.

DATES: This order is effective March 5, 2013.

ADDRESSES: Submit applications for termination of debarment to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Kenny Shade, Office of Regulatory Affairs, Food and Drug Administration, 12420 Parklawn Dr., Rockville, MD 20857, 301–796–4640.

SUPPLEMENTARY INFORMATION:

I. Background

Section 306(b)(1)(C) of the FD&C Act (21 U.S.C. 335a(b)(1)(C)) permits FDA to debar an individual from importing an article of food or offering such an article for import into the United States if FDA finds, as required by section 306(b)(3)(A) of the FD&C Act, that the individual has been convicted of a felony for conduct relating to the importation into the United States of any food.

On November 21, 2011, Mr. Vela was convicted, as defined in section 306(l)(1)(B) of the FD&C Act, when the U.S. District Court for the Southern District of Florida accepted his plea of guilty and entered judgment against him for the following offenses: One count of conspiracy to falsely label and misbrand food, in violation of 18 U.S.C. 371; one count of false labeling of seafood under the Lacey Act, in violation of 16 U.S.C. 3372(d)(2); and one count of misbranding food in violation of 21 U.S.C. 331(a).

FDA's finding that debarment is appropriate is based on the felony convictions referenced herein for conduct relating to the importation into the United States of any food. The factual basis for these convictions is as follows: As alleged in the criminal information filed against Mr. Vela, he was the operating manager and sole shareholder of Sea Food Center, a seafood wholesaler engaged in various aspects of purchasing, importing, processing, packing, selling, and exporting seafood products.

Beginning on or about June 30, 2008, and continuing through on or about June 29, 2009, he knowingly combined, conspired, confederated, and agreed with his co-conspirators to commit an offense against the laws of the United States related to the importation of food. The purpose of the conspiracy was for Mr. Vela and his co-conspirators to unlawfully enrich themselves by

introducing what the criminal information describes as a less marketable substituted seafood product into the U.S. seafood market. Those products—''Shrimp, Product of Thailand,'' ''Shrimp, Product of Malaysia,'' and ''Shrimp, Product of Indonesia''—were misbranded, marketed, and intended to be marketed as ''Shrimp, Product of Panama,'' a seafood product that the criminal information describes as more readily marketable. Mr. Vela instructed employees at Sea Food Center's Tampa facility to divide the shrimp received from Thailand, Malaysia, and Indonesia into smaller portions, and mark them as ''Shrimp, product of Panama,'' on the individual packages, and then place them in boxes, also marked as ''Shrimp, product of Panama.'' Employees under the direction of Mr. Vela's co-conspirator managed and directed the labeling operations at Sea Food Center by providing instructions and other directives to Mr. Vela. The relabeled shrimp were then sold to a food wholesaler based in Keene, NH, which in turn sold the shrimp to a supermarket chain headquartered in Landover, MD. This conduct was in violation of 18 U.S.C. 371.

On or about July 8, 2008, Mr. Vela knowingly engaged in an offense that involved the sale and purchase of, the offer of sale and purchase of, and the intent to sell and purchase shrimp, with a market value greater than $350.00. He knowingly made and caused to be made individual labels, pre-printed bags, and other documents falsely identifying the shrimp as being ''Shrimp, Product of Panama,'' when in fact the shrimp were ''Shrimp, Product of Thailand,'' ''Shrimp, Product of Malaysia,'' and ''Shrimp, Product of Indonesia.'' This conduct was in violation of 16 U.S.C. 3372(d)(2).

On or about July 8, 2008, Mr. Vela engaged in an offense that involved the introduction or delivery for introduction into interstate commerce of a food that was misbranded, with the intent to defraud or mislead, in that he created or caused to be created individual labels, pre-printed bags, and other documents falsely identifying the shrimp. This conduct was in violation of 21 U.S.C. 331(a).

As a result of his conviction, on September 28, 2012, FDA sent Mr. Vela a notice by certified mail proposing to debar him for a period of 5 years from importing articles of food or offering such articles for import into the United States. The proposal was based on a finding under section 306(b)(1)(C) of the FD&C Act that Mr. Vela was convicted of three felony counts under Federal law for conduct relating to the importation into the United States of an article of food because he: Conspired to and committed offenses related to the importation of shrimp into the United States, falsely conveyed information about the shrimp's country of origin; introduced or delivered for introduction misbranded food into interstate commerce; and falsely labeled seafood under the Lacey Act. The proposal was also based on a determination, after consideration of the factors set forth in section 306(c)(3) of the FD&C Act, that Mr. Vela should be subject to a 5-year period of debarment. The proposal also offered Mr. Vela an opportunity to request a hearing, providing him 30 days from the date of receipt of the letter in which to file the request, and advised him that failure to request a hearing constituted a waiver of the opportunity for a hearing and of any contentions concerning this action. Mr. Vela failed to respond within the timeframe prescribed by regulation and has, therefore, waived his opportunity for a hearing and waived any contentions concerning his debarment (21 CFR part 12).

II. Findings and Order

Therefore, the Associate Commissioner for Regulatory Affairs, Office of Regulatory Affairs, under section 306(b)(1)(C) of the FD&C Act, and under authority delegated to the Associate Commissioner (Staff Manual Guide 1410.21), finds that Mr. Adrian Vela has been convicted of three felony counts under Federal law for conduct relating to the importation of an article of food into the United States and that he is subject to a 5-year period of debarment.

As a result of the foregoing finding, Mr. Vela is debarred for a period of 5 years from importing articles of food or offering such articles for import into the United States, effective (see **DATES**). Under section 301(cc) of the FD&C Act (21 U.S.C. 331(cc)), the importing or offering for import into the United States of an article of food by, with the assistance of, or at the direction of Mr. Vela is a prohibited act.

Any application by Mr. Vela for termination of debarment under section 306(d)(1) of the FD&C Act should be identified with Docket No. FDA–2012–N–0777 and sent to the Division of Dockets Management (see **ADDRESSES**). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j).

Publicly available submissions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 8, 2013.

Melinda K. Plaisier,

Acting Associate Commissioner for Regulatory Affairs, Office of Regulatory Affairs.

[FR Doc. 2013–05062 Filed 3–4–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–D–0147]

Draft Guidance for Industry and Food and Drug Administration Staff; Types of Communication During the Review of Medical Device Submissions; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled ''Types of Communication During the Review of Medical Device Submissions.'' The purpose of this guidance is to update the Agency's approach to Interactive Review to reflect FDA's implementation of the Medical Device User Fee Act of 2007 (MDUFA II) Commitment Letters and of undertakings agreed in connection with the Medical Device User Fee Amendments of 2012 (MDUFA III) and to incorporate additional types of communication, all of which increase the efficiency of the review process. This draft guidance is not final nor is it in effect at this time.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by June 3, 2013.

ADDRESSES: Submit written requests for single copies of the draft guidance document entitled ''Types of Communication During the Review of Medical Device Submissions'' to the Division of Small Manufacturers, International, and Consumer Assistance, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 4613, Silver Spring, MD 20993–0002 or the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and

Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–847–8149. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Samie Allen, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 1533, Silver Spring, MD 20993–0002, 301–796–6055, or Tami Belouin, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

In the letters dated September 27, 2007, from the Secretary of Health and Human Services to the Chairman of the Committee on Health, Education, Labor, and Pensions of the U.S. Senate and the Chairman of the Committee on Energy and Commerce of the U.S. House of Representatives setting out the goals of section 201(c) of MDUFA II, Title II of the Food and Drug Administration Amendments of 2007 (FDAAA) (21 U.S.C. 379i note), FDA committed to developing a guidance document that describes an interactive review process between FDA and industry for specific medical device premarket submissions. Further, during discussions with representatives of the medical device industry in the development of the Agency's recommendations for MDUFA III, Title II of the Food and Drug Administration Safety and Innovation Act, Public Law 112–144 (July 9, 2012), 126 Stat. 1002 (21 U.S.C. 301 note), the Agency proposed process improvements to provide further transparency into the review process, including new communication commitments.

This guidance describes four types of communication that occur during the review of a medical device premarket submission. The four types of communication are: Acceptance Review Communication, Substantive Interaction, Interactive Review, and Missed MDUFA Decision Communication.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on communication during a medical device premarket submission review to provide further transparency into, and to increase the efficiency of, the review process. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by using the Internet. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* Guidance documents are also available at either *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.* To receive ''Types of Communication During the Review of Medical Device Submissions,'' you may either send an email request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 301–847–8149 to receive a hard copy. Please use the document number 1804 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 807, subpart E, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 814, subpart B, have been approved under OMB control number 0910–0231; and the collections of information in 21 CFR part 601 have been approved under OMB control number 0910–0338.

V. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

Dated: February 27, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–05015 Filed 3–4–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2000–D–0598]; (Formerly Docket No. 00D–1631)]

International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products; Draft Revised Guidance for Industry on ''Studies To Evaluate the Safety of Residues of Veterinary Drugs in Human Food: Genotoxicity Testing'' (VICH GL23(R)); Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft revised guidance for industry (GFI #116) entitled ''Studies to Evaluate the Safety of Residues of Veterinary Drugs in Human Food: Genotoxicity Testing'' (VICH GL23(R)). This draft revised guidance is a revision of a final guidance on the same topic for which a notice of availability was published in the **Federal Register** of January 4, 2002, and has been developed for veterinary use by the International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH). In this draft revised VICH guidance the recommendation for a second test to evaluate the potential of a chemical to produce chromosomal effects is being revised. The draft revised guidance indicates that the potential of a chemical to produce chromosomal effects can be evaluated using one of the the following three tests: An in vitro chromosomal aberrations test using metaphase analysis, which detects both clastogenicity and aneugenicity; an in vitro mammalian cell micronucleus test, which detects the activity of

clastogenicity and aneugenicity; or a mouse lymphoma test, which, with modification, can detect both gene mutation and chromosomal damage. This draft revised VICH guidance document is intended to facilitate the mutual acceptance of safety data necessary for the establishment of acceptable daily intakes for veterinary drug residues in human food by the relevant regulatory authorities.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft revised guidance before it begins work on the final version of the revised guidance, submit either electronic or written comments on the draft revised guidance by May 6, 2013.

ADDRESSES: Submit written requests for single copies of the draft revised guidance to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft revised guidance document.

Submit electronic comments on the draft revised guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Tong Zhou, Center for Veterinary Medicine, (HFV–153), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8120, *Tong.Zhou@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft revised guidance for industry (GFI #116) entitled ''Studies to Evaluate the Safety of Residues of Veterinary Drugs in Human Food: Genotoxicity Testing'' (VICH GL23(R)). In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote the international harmonization of regulatory requirements. FDA has participated in efforts to enhance harmonization and has expressed its commitment to seek scientifically based harmonized technical procedures for the development of pharmaceutical products. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies in different countries.

FDA has actively participated in the International Conference on Harmonisation of Technical Requirements for Approval of Pharmaceuticals for Human Use (ICH) for several years to develop harmonized technical requirements for the approval of human pharmaceutical and biological products among the European Union, Japan, and the United States. The International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH) is a parallel initiative for veterinary medicinal products. The VICH is concerned with developing harmonized technical requirements for the approval of veterinary medicinal products in the European Union, Japan, and the United States, and includes input from both regulatory and industry representatives.

The VICH Steering Committee is composed of member representatives from the European Commission; European Medicines Evaluation Agency; European Federation of Animal Health; Committee on Veterinary Medicinal Products; U.S. FDA; U.S. Department of Agriculture; Animal Health Institute; Japanese Veterinary Pharmaceutical Association; Japanese Association of Veterinary Biologics; and Japanese Ministry of Agriculture, Forestry and Fisheries.

Four observers are eligible to participate in the VICH Steering Committee: One representative from the government of Australia/New Zealand, one representative from the industry in Australia/New Zealand, one representative from the government of Canada, and one representative from the industry of Canada. The VICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation for Animal Health (IFAH). An IFAH representative also participates in the VICH Steering Committee meetings.

II. Draft Revised Guidance on Genotoxicity Testing

In December 2012, the VICH Steering Committee agreed that a draft revised guidance document entitled ''Studies to Evaluate the Safety of Residues of Veterinary Drugs in Human Food: Genotoxicity Testing'' (VICH GL23(R)) should be made available for public comment. This draft revised VICH guidance is a revision of a final guidance on the same topic for which a notice of availability was published in the **Federal Register** of January 4, 2002 (67 FR 603). In this draft revised guidance the recommendation for a second test to evaluate the potential of a chemical to produce chromosomal effects is being revised. The draft revised guidance indicates that the potential of a chemical to produce chromosomal effects can be evaluated using one of the the following three tests: (1) An in vitro chromosomal aberrations test using metaphase analysis, which detects both clastogenicity and aneugenicity; (2) an in vitro mammalian cell micronucleus test, which detects the activity of clastogenicity and aneugenicity; or (3) a mouse lymphoma test, which, with modification, can detect both gene mutation and chromosomal damage. This VICH draft revised guidance is intended to facilitate the mutual acceptance of safety data necessary for the establishment of acceptable daily intakes for veterinary drug residues in human food by the relevant regulatory authorities. The objective of this draft revised guidance is to ensure international harmonization of genotoxicity testing.

The draft revised guidance is a product of the Safety Expert Working Group of the VICH. Comments about this draft revised guidance document will be considered by FDA and the VICH Safety Expert Working Group.

III. Paperwork Reduction Act of 1995

This draft revised guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in this revised guidance have been approved under OMB control number 0910–0032.

IV. Significance of Guidance

This draft revised guidance, developed under the VICH process, has been revised to conform to FDA's good guidance practices regulation (21 CFR 10.115). For example, the document has been designated ''guidance'' rather than ''guideline.'' In addition, guidance documents must not include mandatory language such as ''must,'' ''shall,'' ''require'' or ''requirement'' unless FDA is using these words to describe a statutory or regulatory requirement.

This draft revised VICH guidance when finalized, will represent the Agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if

such approach satisfies the requirements of the applicable statutes and regulations.

V. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

VI. Electronic Access

Persons with access to the Internet may obtain the draft revised guidance at either *http://www.fda.gov/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/default.htm* or *http://www.regulations.gov.*

Dated: February 27, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–05014 Filed 3–4–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2003–D–0433]

International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products; Revised Guidance for Industry on ''Studies To Evaluate the Safety of Residues of Veterinary Drugs in Human Food: General Approach To Establish a Microbiological Acceptable Daily Intake (ADI)'' (VICH GL36(R)); Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a revised guidance for industry (GFI #159) entitled ''Studies to Evaluate the Safety of Residues of Veterinary Drugs in Human Food: General Approach to Establish a Microbiological Acceptable Daily Intake (ADI),'' (VICH GL36(R)). This guidance has been developed for veterinary use by the International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH). This VICH guidance document is intended to provide guidance for assessing the human food safety of residues from veterinary antimicrobial drugs with regard to effects on the human intestinal flora.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit electronic comments on the guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Silvia A. Pineiro, Center for Veterinary Medicine (HFV–157), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8227, *Silvia.Pineiro@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a revised guidance for industry (GFI #159) entitled ''Studies to Evaluate the Safety of Residues of Veterinary Drugs in Human Food: General Approach to Establish a Microbiological Acceptable Daily Intake (ADI),'' (VICH GL36(R)).

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote the international harmonization of regulatory requirements. FDA has participated in efforts to enhance harmonization and has expressed its commitment to seek scientifically-based, harmonized technical procedures for the development of pharmaceutical products. One of the goals of harmonization is to identify, and then reduce, differences in technical requirements for drug development among regulatory agencies in different countries.

FDA has actively participated in the International Conference on Harmonisation of Technical Requirements for Approval of Pharmaceuticals for Human Use for several years to develop harmonized technical requirements for the approval of human pharmaceutical and biological products among the European Union, Japan, and the United States. The VICH is a parallel initiative for veterinary medicinal products. The VICH is concerned with developing harmonized technical requirements for the approval of veterinary medicinal products in the European Union, Japan, and the United States, and includes input from both regulatory and industry representatives.

The VICH Steering Committee is composed of member representatives from the European Commission, European Medicines Evaluation Agency, European Federation of Animal Health, Committee on Veterinary Medicinal Products, the U.S. FDA, the U.S. Department of Agriculture, the Animal Health Institute, the Japanese Veterinary Pharmaceutical Association, the Japanese Association of Veterinary Biologics, and the Japanese Ministry of Agriculture, Forestry, and Fisheries.

Four observers are eligible to participate in the VICH Steering Committee: One representative from the governments of Australia/New Zealand, one representative from industry in Australia/New Zealand, one representative from the government of Canada, and one representative from the industry of Canada. The VICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation for Animal Health (IFAH). An IFAH representative also participates in the VICH Steering Committee meetings.

II. Revised Guidance on Microbiological ADI

In the **Federal Register** of June 3, 2011 (76 FR 32218), FDA published a notice of availability for a draft revised guidance entitled ''Studies to Evaluate the Safety of Residues of Veterinary Drugs in Human Food: General Approach to Establish a Microbiological ADI'' (VICH GL36(R)). Interested persons were given until August 2, 2011, to comment on the draft revised guidance. FDA received two comments on the draft, and those comments, as well as those received by other VICH member regulatory agencies, were considered as the guidance was finalized. No substantive changes were made in finalizing this guidance document. The revised guidance announced in this document finalizes the draft revised guidance dated June 2, 2011. The final revised guidance is a product of the Microbiological ADI Expert Working Group of the VICH.

This document provides guidance for assessing the human food safety of

residues from veterinary antimicrobial drugs with regard to effects on the human intestinal flora. The objectives of this guidance are to: (1) Outline the steps in determining the need for establishing a microbiological acceptable daily intake (ADI); (2) recommend test systems and methods for determining no-observable adverse effect concentrations (NOAECs) and no-observable adverse effect levels (NOAELs) for the endpoints of health concern; and (3) recommend a procedure to derive a microbiological ADI. It is recognized that different tests may be useful. The experience gained with the recommended tests may result in future modifications to this guidance and its recommendations.

III. Significance of Guidance

This guidance, developed under the VICH process, has been revised to conform to FDA's good guidance practices regulation (21 CFR 10.115). For example, the document has been designated ''guidance'' rather than ''guideline.'' In addition, guidance documents must not include mandatory language such as ''shall,'' ''must,'' ''require,'' or ''requirement,'' unless FDA is using these words to describe a statutory or regulatory requirement.

This guidance represents the Agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

IV. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in this guidance have been approved under OMB control number 0910–0032.

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

VI. Electronic Access

Persons with access to the Internet may obtain the guidance at either *http://www.fda.gov/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/default.htm* or *http://www.regulations.gov.*

Dated: February 27, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–05016 Filed 3–4–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–1153]

Implementation of the FDA Food Safety Modernization Act Provision Requiring FDA To Establish Pilot Projects and Submit a Report to Congress for the Improvement of Tracking and Tracing of Food; Request for Comments and for Information

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments and information.

SUMMARY: In September 2011, the Food and Drug Administration (FDA or the Agency) asked the Institute of Food Technologists (IFT) to execute product tracing pilot projects as described in the FDA Food Safety Modernization Act (FSMA). FDA recently released a report from IFT on these pilot projects, entitled ''Pilot Projects for Improving Product Tracing along the Food Supply System.'' FDA is announcing the opening of a docket to provide stakeholders and other interested parties an opportunity to submit comments and information that will help the Agency as it forms its own recommendations, to be contained in the Agency's report to Congress, and as it implements the FSMA provisions relating to the tracking and tracing of food.

DATES: Submit electronic or written comments and information by April 4, 2013.

ADDRESSES: You may submit comments and information, identified by Docket No.FDA–2012–N–2012–N–1153, by any of the following methods:

Electronic Submissions

Submit electronic comments and information in the following way:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments and information.

Written Submissions

Submit written submissions in the following way:

• *Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the Agency name and Docket No. FDA–2012–N–1153 for this notice. All comments and information received may be posted without change to *http://www.regulations.gov,* including any personal information provided. For additional information on submitting comments and information, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments and information received, go to *http://www.regulations.gov* and insert the docket number(s), found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Sherri A. McGarry, Office of Foods, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 1212, Silver Spring, MD 20903, 301–796–3851.

SUPPLEMENTARY INFORMATION:

I. Background

A. FSMA Provisions Regarding Enhanced Tracking and Tracing of Food and Recordkeeping

On January 4, 2011, the President signed FSMA (Pub. L. 111–353) into law. Section 204 of FSMA, 21 U.S.C. 2223, relates to enhanced tracking and tracing of food and recordkeeping. As part of this provision, FDA must, among other things, complete the following:

1. Establish pilot projects in coordination with the food industry to explore and evaluate methods for rapid and effective tracking and tracing of foods. FDA is required to submit a report to Congress on the findings of the pilot projects together with FDA's recommendations for improving tracking and tracing of food;

2. Assess the costs and benefits associated with the adoption and use of several product tracing technologies and the feasibility of such technologies for different sectors of the food industry (including small businesses);

3. To the extent practicable in assessing the costs, benefits, and

feasibility of several product tracing technologies, evaluate domestic and international product tracing practices; consider international efforts and compatibility with global tracing systems, as appropriate; and consult with a diverse and broad range of experts and stakeholders;

4. Establish within FDA, as appropriate, a product tracing system to receive information that improves the capacity of the Secretary to effectively and rapidly track and trace food;

5. Publish a notice of proposed rulemaking to establish additional recordkeeping requirements for high risk foods;

6. Designate high-risk foods for which the additional recordkeeping requirements are appropriate and necessary to protect the public health. The list of high-risk foods is to be published on FDA's Internet Web site when the Agency issues the final rule establishing additional recordkeeping requirements for high-risk foods; and

7. Issue a small entity compliance guide within 6 months after the final rule is issued.

B. FSMA Provisions Directing FDA To Establish Pilot Projects To Explore and Evaluate Methods for Rapid and Effective Tracking and Tracing of Foods

Under section 204(a) of FSMA, in September 2011, FDA established pilot projects in coordination with the food industry to explore and evaluate methods for rapid and effective tracking and tracing of foods. These product tracing pilots were executed through an existing contract with the IFT. IFT was required to:

1. Conduct two food product tracing pilot projects—one in coordination with the processed food sector and one in coordination with the produce sectors—working in consultation with the U.S. Department of Agriculture, State public health agencies, and nongovernmental organizations that represent the interests of consumers;

2. Conduct the pilot projects to reflect the diversity of the food supply and consider/address confounding factors, such as commingling and transshipment;

3. Include different types of FDA-regulated foods that were the subject of significant outbreaks between 2005 and 2010;

4. Use the selected foods to develop and demonstrate methods for rapid and effective tracking and tracing of foods that are practical for facilities of varying sizes, including small businesses;

5. Use the selected foods to demonstrate appropriate technologies that enhance the tracking and tracing of foods along the supply chain from source to points of service;

6. Demonstrate the tracking and tracing of: (a) A selected processed food and its key ingredients (minimum of two ingredients) and (b) a selected fruit and/or vegetable along the supply chain;

7. Assess the costs and benefits of the methods for rapid and effective tracking and tracing of the selected foods and key ingredients; and

8. Determine the feasibility of product tracing technologies for different sectors of the food industry, including small businesses.

FDA released the report containing the findings of the pilot projects, entitled ''Pilot Projects for Improving Product Tracing along the Food Supply System'' in March 2013. The report is available on FDA's Product Tracing Web page at *http://www.fda.gov/Food/FoodSafety/FSMA/ucm270851.htm.* This extensive report is being reviewed by FDA. After careful review of this report and information previously gathered, FDA will submit its report to Congress containing FDA recommendations for improving product tracing. This docket is being opened in order to request comments on the pilot project report's findings and recommendations to help inform FDA in preparing its recommendations in the Agency's report to Congress.

C. Request for Comments and Information

In addition to providing the findings of the pilot projects, the report contains IFT's recommendations for FDA on improving tracking and tracing of food. FDA released this report to make it available for stakeholders and to solicit input that may be helpful as FDA forms its own recommendations, to be contained in the Agency's report to Congress, and as FDA implements other FSMA requirements related to product tracing. FDA invites comment on the findings and recommendations contained in the IFT report and the submission of information relevant to improving product tracing. In addition, FDA would like specific comment on the following:

1. The report contains specific recommendations regarding key data elements (KDEs) and critical tracking events (CTEs). How might this work for your industry segment? What would you keep the same or change in Table 2 in the Executive Brief of the report? Please include an explanation of why you would keep the same or change.

2. The report recommends that all foods be covered, not just high-risk foods. The rulemaking requirement in section 204(d) of FSMA only refers to high-risk foods. Should FDA pursue implementation of some or all of the report's recommendations with respect to all foods, not just high-risk foods? If so, what routes might the Agency use?

3. The report recommends that each member of the food supply chain should be required to develop, document, and exercise a product tracing plan. FDA is aware that industry often conducts and documents recall exercises, which are essentially traceforward exercises. Is it feasible to add a traceback to existing procedures and exercises? Should FDA include this IFT recommendation as one of its recommendations in the Agency's report to Congress? Please explain why the FDA should or should not include.

4. What additional information and data sources could be used to determine cost and benefits associated with implementing IFT's recommendations for KDEs and CTEs?

5. How might FDA more clearly and consistently articulate the information it needs to conduct product tracing investigations? Would posting information on FDA's Web site on how FDA typically conducts a traceback or traceforward be helpful?

6. The report recommends that FDA develop standardized electronic mechanisms for the reporting and acquiring of CTEs and KDEs during product tracing investigations. How would this work for your industry segment? How might it be achieved most expeditiously?

7. Is there anything else FDA should consider in preparing its recommendations for improving product tracing in the Agency's report to Congress?

II. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov*.

III. References

The following reference has been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday, and is available electronically at *http://www.regulations.gov*.

1. McEntire, Jennifer and Bhatt, Tejas, ''Pilot Projects for Improving Product Tracing Along the Food Supply System—Final Report,'' *Institute of Food Technologists,* August 2012.

Dated: February 27, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–04997 Filed 3–4–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Commission on Childhood Vaccines; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: Advisory Commission on Childhood Vaccines (ACCV).

Date and Time: March 07, 2013, 10:00 a.m. to 4:00 p.m. EDT.

Place: Audio Conference Call.

The ACCV will meet on Thursday, March 7, from 10:00 a.m. to 4:00 p.m. (EDT). The public can join the meeting via audio conference call by dialing 1–800–369–3104 on March 7 and providing the following information:

Leader's Name: Dr. Vito Caserta.

Password: ACCV.

Agenda: The agenda items for the March meeting will include, but are not limited to: Updates from the Division of Vaccine Injury Compensation (DVIC), Department of Justice (DOJ), National Vaccine Program Office (NVPO), Immunization Safety Office (Centers for Disease Control and Prevention), National Institute of Allergy and Infectious Diseases (National Institutes of Health) and Center for Biologics, Evaluation and Research (Food and Drug Administration). A draft agenda and additional meeting materials will be posted on the ACCV Web site (*http://www.hrsa.gov/vaccinecompensation/accv.htm*) prior to the meeting. Agenda items are subject to change as priorities dictate.

Public Comment: Persons interested in providing an oral presentation should submit a written request, along with a copy of their presentation to: Annie Herzog, DVIC, Healthcare Systems Bureau (HSB), Health Resources and Services Administration (HRSA), Room 11C–26, 5600 Fishers Lane, Rockville, MD 20857 or email: *aherzog@hrsa.gov*. Requests should contain the name, address, telephone number, email address, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. DVIC will notify each presenter by email, mail or telephone of their assigned presentation time. Persons who do not file an advance request for a presentation, but desire to make an oral statement, may announce it at the time of the public comment period. Public participation and ability to comment will be limited to space and time as it permits.

For Further Information Contact: Anyone requiring information regarding the ACCV should contact Annie Herzog, DVIC, HSB, HRSA, Room 11C–26, 5600 Fishers Lane, Rockville, MD 20857; telephone (301) 443–6593 or email: *aherzog@hrsa.gov*.

Dated: February 26, 2013.

Bahar Niakan,

Director, Division of Policy and Information Coordination.

[FR Doc. 2013–04953 Filed 3–4–13; 8:45 am]

BILLING CODE 4165–15–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 78 FR 956–957, dated January 7, 2013).

This notice reflects organizational changes to the Health Resources and Services Administration. This notice updates the functional statement for the Office of Federal Assistance Management (RJ). Specifically, this notice: (1) Moves the grant officer and loan officer function from the Office of the Associate Administrator (RJ) to the Division of Grants Management Operations (RJ3); and (2) moves the electronic grant management system function from the Division of Grants Management Operations (RJ3) to the Office of the Associate Administrator (RJ).

Chapter RJ—Office of Federal Assistance Management

Section RJ–20, Functions

(1) Delete the functional statement for the Office of the Associate Administrator (RJ) and the functional statement for the Division of Grants Management Operations (RJ3), and replace in their entirety.

Office of Federal Assistance Management (RJ)

Provides national leadership in the administration and assurance of the financial integrity of HRSA's programs and provides oversight over all HRSA activities to ensure that HRSA's resources are being properly used and protected. Provides leadership, direction, and coordination to all phases of grants policy, administration, and independent review of competitive grant applications. Specifically: (1) Serves as the Administrator's principal source for grants policy and financial integrity of HRSA programs; (2) exercises oversight over the Agency's business processes related to assistance programs; (3) facilitates, plans, directs, and coordinates the administration of HRSA grant policies and operations; (4) directs and carries out the independent review of grant applications for all of HRSA's programs; (5) exercises the sole responsibility within HRSA for all aspects of grant and cooperative agreement receipt, award, and post-award processes: and (6) provides oversight of the management and maintenance of, and enhancements to, the electronic grant management system that enables staff to perform their day-to-day work.

Division of Grants Management Operations (RJ3)

(1) Plans, directs and carries out the grants officer functions for all of HRSA's grant programs as well as awarding official functions for various scholarship, loan, and loan repayment assistance programs; (2) participates in the planning, development, and implementation of policies and procedures for grants and cooperative agreements; (3) provides assistance and technical consultation to program offices and grantees in the application of laws, regulations, policies, and guidelines relative to the Agency's grant and cooperative agreement programs; (4) develops standard operating procedures, methods, and materials for the administration of the Agency's grants programs; (5) establishes standards and guides for grants management operations; (6) reviews grantee financial status reports and prepares reports and

analyses on the grantee's use of funds; (7) provides technical assistance to applicants and grantees on financial and administrative aspects of grant projects; (8) provides data and analyses as necessary for budget planning, hearings, operational planning, and management decisions; (9) participates in the development of program guidance and instructions for grant competitions; (10) oversees contracts in support of receipt of applications, records management, and grant closeout operations; and (11) supports post-award monitoring and closeout by analyzing Payment Management System data and working with grant and program office staff.

Section RJ–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: February 14, 2013.

Mary K. Wakefield,

Administrator.

[FR Doc. 2013–05064 Filed 3–4–13; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; Understanding Environmental Control of Epigenetic/ Mechanisms.

Date: March 27, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Radisson Hotel Research Triangle Park, 150 Park Drive, Research Triangle Park, NC 27709.

Contact Person: Leroy Worth, Ph.D., Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30/Room 3171, Research Triangle Park, NC 27709, 919/541–0670, *worth@niehs.nih.gov*.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; Transgenerational Effects from Environmental Exposures.

Date: March 28, 2013.

Time: 8:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Raleigh-Durham Airport RTP, 4810 Page Creek Lane, Durham, NC 27703.

Contact Person: Sally Eckert-Tilotta, Ph.D., Scientific Review Administrator, Nat. Institute of Environmental Health Sciences, Office of Program Operations, Scientific Review Branch, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–1446, *eckertt1@niehs.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: February 26, 2013.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–04957 Filed 3–4–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Division of Intramural Research Board of Scientific Counselors, NIAID.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Allergy and Infectious Diseases, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Division of Intramural Research Board of Scientific Counselors, NIAID.

Date: June 10–12, 2013.

Time: June 10, 2013, 7:45 a.m. to 7:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 50, Conference Room 1227/1233, 50 Center Drive, Bethesda, MD 20892.

Time: June 11, 2013, 7:00 a.m. to 7:15 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 50, Conference Room 1227/1233, 50 Center Drive, Bethesda, MD 20892.

Time: June 12, 2013, 7:00 a.m. to 10:30 a.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 50, Conference Room 1227/1233, 50 Center Drive, Bethesda, MD 20892.

Contact Person: Kathryn C. Zoon, Ph.D., Director, Division of Intramural Research, National Institute of Allergy and Infectious Diseases, NIH Building 31, Room 4A30, Bethesda, MD 20892, 301–496–3006, *kzoon@niaid.nih.gov*.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 27, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–04956 Filed 3–4–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; George M. O'Brien Kidney Research Core Centers (P30).

Date: April 1–2, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, 7400 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Paul A. Rushing, Ph.D., Scientific Review Officer, Review Branch, DEA, Niddk, National Institutes of Health, Room 747, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8895, *rushingp@extra.niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: February 26, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–04958 Filed 3–4–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Understanding the Functions of Uncharacterized Genes in Infectious Disease Pathogens (U19).

Date: April 2–4, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Frank S. De Silva, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–594–1009, *fdesilva@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 27, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–04962 Filed 3–4–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Digestive Sciences.

Date: March 27–28, 2013.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Bonnie L, Burgess-Beusse, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, 301–435–1783, *beusseb@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Bioengineering Sciences and Technologies: AREA Review.

Date: March 27–28, 2013.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Ping Fan, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5154, MSC 7840, Bethesda, MD 20892, 301–408–9971, *fanp@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Risk, Prevention, and Health Behavior.

Date: March 27–28, 2013.

Time: 9:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Kristen Prentice, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3112, MSC 7808, Bethesda, MD 20892, 301–496–0726, *prenticekj@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Resource Center: Proteomics.

Date: March 27–29, 2013.

Time: 7:00 p.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Hotel, 4300 Military Road, Washington, DC 20015.

Contact Person: Allen Richon, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7892, Bethesda, MD 20892, 301–435–1024, *allen.richon@nih.hhs.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 27, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–04960 Filed 3–4–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; R13 Conference Review.

Date: March 26–28, 2013.

Time: 8:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817, (Virtual Meeting).

Contact Person: Ellen S. Buczko, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, Room 3145 MSC 7616, Bethesda, MD 20892–7616, 301–451–2676, *ebuczko1@niaid.nih.gov*.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Program Project Application (P01).

Date: April 5, 2013.

Time: 11:30 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Ellen S. Buczko, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, Room 3145 MSC 7616, Bethesda, MD 20892–7616, 301–451–2676, *ebuczko1@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 26, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–04959 Filed 3–4–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Genomic Risk and Resilience in 22q11 Deletion Syndrome.

Date: March 19, 2013.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Vinod Charles, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9606, Bethesda, MD 20892–9606, 301–443–1606, *charlesvi@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: February 27, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–04961 Filed 3–4–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2013–0090]

Towing Safety Advisory Committee; Meetings

AGENCY: Coast Guard, DHS.

ACTION: Notice of Federal Advisory Committee Meetings.

SUMMARY: The Towing Safety Advisory Committee will meet in New York City, New York, March 21 and 22, 2013, to review and discuss recommendations from its subcommittees, and to receive tasking and briefs listed in the agenda in the **SUPPLEMENTARY INFORMATION** section below. The subcommittees will meet March 20, 2012, and work on seven assigned tasks listed in the referenced agenda. All meetings will be open to the public.

DATES: Subcommittees will meet on Wednesday, March 20, 2013 from 8:30 a.m. to 5:30 p.m. The full Committee will meet on Thursday, March 21, 2013, from 8 a.m. to 5 p.m. and again on Friday, March 22, 2013, from 8 a.m. to 12 noon. These meetings may close early if all business is completed. Written statements and requests to make oral presentations at the meetings should reach the Coast Guard on or before March 14, 2013.

ADDRESSES: The meetings will be held at the Alexander Hamilton U.S. Customs House, One Bowling Green, New York, NY 10004. Information on and directions to the Custom House may be found at its Web site at *www.gsa.gov/portal/content/102466*. If you are planning to attend the meeting, you will be required to pass through a security checkpoint and show your state-issued photo identification. Please arrive at least 30 minutes before the planned start of the meeting in order to pass through security.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section as soon as possible.

To facilitate public participation, we are inviting public comment on the issues to be considered by the committee as listed in the ''Agenda'' section below. Written comments must be identified by the Docket Number USCG–2013–0090 and submitted via *one* of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.*

Follow the instructions for submitting comments.

- *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. We encourage use of electronic submissions because security screening may delay the delivery of mail.
- *Fax:* 202–493–2251.

• *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.

Instruction: All submissions received must include the words ''Department of Homeland Security'' and the docket number of this action. All comments submitted will be posted on *www.regulations.gov* without alteration and will contain any personal information you 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,* insert USCG–2013–0090 in the Search Box, press Enter, and then click on the item you are interested in viewing.

FOR FURTHER INFORMATION CONTACT: Commander Robert L. Smith Jr., Designated Federal Officer (DFO) for TSAC, by Phone 202–372–1410, fax 202–372–1926, or email *Robert.L.Smith@uscg.mil* or Mr. William J. Abernathy, Alternate DFO TSAC; by Phone 202–372–1363, fax 202–372–1926, or email *William.J.Abernathy@uscg.mil.*

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act (FACA), 5 U.S.C. App. (PL 92–463). This Committee is established in accordance with and operates under the provisions of the FACA. The Towing Safety Advisory Committee provides advice and recommendations to the Secretary of the Department of Homeland Security on matters and actions concerning shallow-draft inland and coastal waterway navigation and towing safety. See 33 U.S.C. 1231a.

Agenda of Meetings

The subcommittees will meet on March 20 from 8:30 a.m. to 5 p.m. to work on their specific task assignments:

(1) Task Statement 12–01, Recommendations for the Prevention of Towing Vessel Crewmember Falls Overboard.

(2) Task Statement 12–02, Review and Recommendations for the Revision of NVIC 1–95, Voluntary Training Standards for Entry-Level Personnel on Towing Industry Vessels.

(3) Task Statement 12–03, Recommendations for the Enhancement of Towing Vessel Operational Stability.

(4) Task Statement 12–04, Recommendations for Safety Standards of Portable Facility Vapor Control Systems Used for Marine Operations.

(5) Task Statement 12–05, Recommendations to Enhance Fire Prevention and Containment aboard Towing Vessels.

(6) Task Statement 13–01, Recommendations to Automatic Identification System (AIS) Encoding for Towing Vessels.

(7) Task Statement 13–02, Recommendations Regarding Manning of Inspected Towing Vessels.

On March 21, 2013 from 8 a.m. to 5:30 p.m. and on March 22, 2013 from 8 a.m. until 12 noon, TSAC will meet to receive oral and written reports from its subcommittees on the following issues:

(1) Recommendations for the Prevention of Towing Vessel Crewmember Falls Overboard. A final report will be given.

(2) Review and Recommendations for the Revision of NVIC 1–95, Voluntary Training Standards for Entry-Level Personnel on Towing Industry Vessels. A final report will be given.

(3) Recommendations for the Enhancement of Towing Vessel Operational Stability. A final report will be given.

(4) Recommendations for Safety Standards of Portable Facility Vapor Control Systems Used for Marine Operations. A final report will be given.

(5) Recommendations to Enhance Fire Prevention and Containment aboard Towing Vessels. An interim report will be given.

(6) AIS encoding for Towing Vessels. An interim report will be given.

(7) Recommendations regarding Manning of Inspected Towing Vessels. An interim report will be given.

There will be a comment period for TSAC and a comment period for public after each report, but before each recommendation is formulated. The committee will review the information presented on each issue, deliberate on any recommendations presented in the subcommittees' reports, and formulate recommendations for the Department's consideration. A copy of each report will be available at *http://homeport.uscg.mil/TSAC.*

The committee will also receive taskings from the Designated Federal Officer on the following:

(1) Recommendations on the Designation of Narrow Channels;

(2) Recommendations for the Standardization of Tug/Towboat Definitions, and;

(3) Recommendations for Wake and Surge Attenuation Systems for Marinas Situated Near Commercial Navigation Channels.

The Committee will receive briefs on the following topics:

(1) A bi-annual report on the status of TSAC recommendations;

(2) The Coast Guard's Towing Vessel National Center of Expertise;

(3) The Coast Guard's Investigations National Center of Expertise;

(4) The National Maritime Center concerning Medical Screening for Licensure; and

(5) The Use of Liquefied Natural Gas (LNG) as a Commercial Marine Fuel.

Procedural

All meetings are open to the public. Please note that the meetings may close early if all business is complete. An opportunity for oral comments by the public will be provided during the meetings on March 21 and March 22. Speakers are requested to limit their comments to 5 minutes. Please note that the public oral comment period may end before the end of the stated meeting times if the committee has finished its business. If you would like to make an oral presentation at a meeting, please notify the DFO, listed above in the ''For Further Information Contact'' section, no later than March 14, 2013. Written statements (20 copies) for distribution at a meeting should reach the Coast Guard no later than March 14, 2013.

Minutes

Minutes from the meeting will be available for public review within 90 days following the close of the meeting and can be accessed from the Coast Guard Homeport Web site *http://homeport.uscg.mil/TSAC.*

Dated: February 28, 2013.

J. G. Lantz,

Director of Commercial Regulations and Standards.

[FR Doc. 2013–05081 Filed 3–4–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2013–0003]

Notice of Chargeable Rates Under the National Flood Insurance Program for Non-Primary Residences

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) is publishing the chargeable rates under the National Flood Insurance Program for non-primary residences.

DATES: The rates announced in this notice are effective January 1, 2013.

ADDRESSES: The docket for this notice is available at www.regulations.gov under Docket ID FEMA–2013–0003. You may also view the docket at the Office of Chief Counsel, Federal Emergency Management Agency, Room 835, 500 C Street SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Tom Hayes, Actuary, FEMA, 1800 South Bell St., Arlington, VA 20598–3010, at *Thomas.Hayes@fema.dhs.gov* or (202) 6463419.

SUPPLEMENTARY INFORMATION: Pursuant to section 100205 of the Biggert-Waters Flood Insurance Reform Act of 2012 (BW12), Public Law 112–141, 42 U.S.C. 4015, FEMA is authorized to prescribe by notice chargeable premium rates for any residential property which is not the primary residence of an individual. These chargeable premium rates are for coverage which is at or below the following limits:

(1) For dwelling properties in States other than Alaska, Hawaii, the Virgin Islands and Guam (i) $35,000 aggregate liability for any property containing only one unit, (ii) $100,000 for any property containing only one unit, and (iii) $10,000 liability per unit for any contents related to such unit.

(2) For dwelling properties in Alaska, Hawaii, the Virgin Islands, and Guam (i) $50,000 aggregate liability for any property containing only one unit, (ii) $150,000 for any property containing only one unit, and (iii) $10,000 aggregate liability per unit for any contents related to such unit.

(3) For churches and other properties (i) $100,000 for the structure and (ii) $100,000 for the contents of any such unit.

The chargeable premium rates for residential property which is not the primary residence of an individual effective on or after January 1, 2013 are as follows:

Type of structure	A Zone [1] rates per year per $100 coverage on:		V Zone [2] rates per year per $100 coverage on:	
	Structure	Contents	Structure	Contents
No Basement or Enclosure	.95	1.20	1.24	1.54
With Basement or Enclosure	1.02	1.20	1.33	1.54

[1] A-zones are zones A1–A30, AE, AO, AH, and unnumbered A-zones.
[2] V-zones are zones V1–V30, VE, and unnumbered V-zones.

Pursuant to section 100205 of BW12, rates for any residential property that is not the primary residence of an individual must increase by 25 percent per year until the average risk premium rate is equal to the actuarial rate. See 42 U.S.C. 4015(e). FEMA will publish future increases to these rates by a notice in the **Federal Register**.

Authority: 42 U.S.C. 4014, 4015.

Edward L. Connor,

Deputy Associate Administrator for Federal Insurance, Federal Emergency Management Agency.

[FR Doc. 2013–04981 Filed 3–4–13; 8:45 am]

BILLING CODE 9110–11–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3361–EM; Docket ID FEMA–2013–0001]

Connecticut; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Connecticut (FEMA–3361–EM), dated February 10, 2013, and related determinations.

DATES: *Effective Date:* February 11, 2013.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective February 11, 2013.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2013–04980 Filed 3–4–13; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2013–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final Notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

DATES: The effective date of June 18, 2013 which has been established for the FIRM and, where applicable, the

supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *www.msc.fema.gov* by the effective date indicated above.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Associate Adminstrator for Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *www.msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below:

Community	Community map repository address
Unincorporated Areas of Flathead County, Montana Docket No.: FEMA–B–1239	
Unincorporated Areas of Flathead County	Flathead County Planning and Zoning Office, 1035 1st Avenue West, Kalispell, MT 59901.
Calhoun County, Florida, and Incorporated Areas Docket No.: FEMA–B–1241	
City of Blountstown	City Hall, 20591 Central Avenue West, Blountstown, FL 32424.
Town of Altha	Town Hall, 25586 North Main Street, Altha, FL 32421.
Unincorporated Areas of Calhoun County	Calhoun County Courthouse, 20859 Central Avenue East, Blountstown, FL 32424.
Liberty County, Florida, and Incorporated Areas Docket No.: FEMA–B–1241	
City of Bristol	City Hall, 12444 Northwest Virginia G. Weaver Street, Bristol, FL 32321.
Unincorporated Areas of Liberty County	Liberty County Building Department, 10818 Northwest State Road 20, Bristol, FL 32321.
Franklin County, Kentucky, and Incorporated Areas Docket No.: FEMA–B–1243	
City of Frankfort	Planning and Zoning Department, 315 West 2nd Street, Frankfort, KY 40602.
Unincorporated Areas of Franklin County	Franklin County Courthouse, 315 West Main Street, Frankfort, KY 40601.
Pendleton County, Kentucky, and Incorporated Areas Docket No.: FEMA–B–1243	
City of Butler	City Hall, 102 Front Street, Butler, KY 41006.
City of Falmouth	City Hall, 230 Main Street, Falmouth, KY 41040.
City of Williamstown	City Building, 400 North Main Street, Williamstown, KY 41097.
Unincorporated Areas of Pendleton County	Pendleton County Judge's Office, 233 Main Street, Falmouth, KY 41040.
McCook County, South Dakota, and Incorporated Areas Docket No.: FEMA–B–1251	
City of Salem	City Hall, 400 North Main Street, Salem, SD 57058.
Unincorporated Areas of McCook County	McCook County Offices, 130 West Essex Avenue, Salem, SD 57058.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

James A. Walke,

Acting Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2013–04982 Filed 3–4–13; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2013–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final Notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

DATES: The effective date of June 18, 2013 which has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *www.msc.fema.gov* by the effective date indicated above.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Associate Adminstrator for Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *www.msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

Community	Community Map Repository Address
Waushara County, Wisconsin, and Incorporated Areas Docket No.: FEMA–B–1243	
City of Berlin	City Hall, 108 North Capron Street, Berlin, WI 54923.
City of Wautoma	City Hall, 210 East Main Street, Wautoma, WI 54982.
Unincorporated Areas of Waushara County	Waushara County Courthouse, 209 South Saint Marie Street, Wautoma, WI 54982.
Village of Hancock	Village Office, 420 North Jefferson Street, Hancock, WI 54943.
Village of Lohrville	Village Hall, 123 Park Road, Lohrville, WI 54970.
Village of Redgranite	Village Hall, 161 Dearborn Street, Redgranite, WI 54970.
Village of Wild Rose	Village Hall, 500 Main Street, Wild Rose, WI 54984.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Roy Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2013–04983 Filed 3–4–13; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4101–DR; Docket ID FEMA–2013–0001]

Mississippi; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Mississippi (FEMA–4101–DR), dated February 13, 2013, and related determinations.

DATES: *Effective Date:* February 13, 2013.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated February 13, 2013, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency

Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Mississippi resulting from severe storms, tornadoes, and flooding beginning on February 10, 2013, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq. (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Mississippi.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and assistance for debris removal and emergency protective measures (Categories A and B) under the Public Assistance program in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate subject to completion of Preliminary Damage Assessments (PDAs). Direct Federal assistance is authorized.

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and Other Needs Assistance will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Terry L. Quarles, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Mississippi have been designated as adversely affected by this major disaster:

Forrest and Lamar Counties for Individual Assistance.

Forrest and Lamar Counties for debris removal and protective measures (Categories A and B), including direct federal assistance, under the Public Assistance program.

All counties within the State of Mississippi are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2013–04978 Filed 3–4–13; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4095–DR; Docket ID FEMA–2013–0001]

New Hampshire; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New Hampshire (FEMA–4095–DR), dated November 28, 2012, and related determinations.

DATES: *Effective Date:* February 27, 2013.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of New Hampshire is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of November 28, 2012.

Rockingham County for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2013–04985 Filed 3–4–13; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4100–DR; Docket ID FEMA–2013–0001]

Arkansas; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Arkansas (FEMA–4100–DR), dated January 29, 2013, and related determinations.

DATES: *Effective Date:* February 14, 2013.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Arkansas is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of January 29, 2013.

Clark County for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2013–04979 Filed 3–4–13; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4101–DR; Docket ID FEMA–2013–0001]

Mississippi; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Mississippi (FEMA–4101–DR), dated February 13, 2013, and related determinations.

DATES: *Effective Date:* February 19, 2013.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Mississippi is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of February 13, 2013.

Forrest and Lamar Counties for Public Assistance [Categories C–G] (already designated for Individual Assistance and debris removal and emergency protective measures [Categories A and B], including direct federal assistance, under the Public Assistance program).

Marion and Wayne Counties for Public Assistance, including direct federal assistance (already designated for Individual Assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2013–04984 Filed 3–4–13; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5687–N–08]

Notice of Proposed Information Collection; Comment Request: The Housing Counseling Federal Advisory Committee Membership Application

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:* May 6, 2013.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, Room 9120 or the number for the Federal Relay Service (1–800–877–8339).

FOR FURTHER INFORMATION CONTACT: Marjorie George, Senior Housing Program Specialist, Office of Housing Counseling, Office of Outreach and Capacity Building, U.S. Department of HUD, 200 Jefferson Avenue, Suite 300, Memphis TN 38103., telephone 901–544–4228 (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: Membership Application for the Housing Counseling Federal Advisory Committee.

OMB Control Number, if applicable: 2502-New.

Description of the need for the information and proposed use: The Housing Counseling Federal Advisory Committee (HCFAC) was created under the Dodd-Frank ''Expand and Preserve Homeownership through Counseling Act'' Public Law 111–203, title XIV, § 1441, July 21, 2010, 124 Stat. 2163 (Act), 42 U.S.C. 3533(g) to provide strategic planning and policy guidance to HUD on housing counseling issues. The Membership Application will be use to select the members of the HCFAC

Agency form numbers, if applicable: HUD–90005–HCFAC.

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 250. The number of respondents is 250 the number of responses is 250 the frequency of response is on occasion, and the burden hour per response is $34.34.

Status of the proposed information collection: This is a new collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: February 26, 2013.

Laura M. Marin,

Acting General Deputy Assistant, Secretary for Housing-Acting General Deputy Federal Housing Commissioner.

[FR Doc. 2013–05090 Filed 3–4–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5683–N–21]

Notice of Submission of Proposed Information Collection to OMB: Public Housing Reform; Change in Admission and Occupancy Requirements

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been 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.

The collection of information implements changes to the admission and occupancy requirements for the public housing and Section 8 assisted housing programs made by the Quality Housing and Work Responsibility (QHWRA) Act 1998 (Title V of the FY 1999 HUD appropriations Act, Pub. L. 105–276, 112 Stat. 2518, approved October 21, 1998), which amended the United States Housing Act of 1937. QHWRA made comprehensive changes to HUD's public housing, Section 8 programs. Some of the changes made by the 1998 Act (i.e., QHWRA) affect public housing only and others affect the Section 8 and public housing programs. These changes cover choice of rent, community service and self-sufficiency in public housing; and admission preferences and determination of income and rent in public housing and Section 8 housing assistance programs.

DATES: *Comments Due Date:* April 4, 2013.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2577–0230) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov.* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (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 collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposed: Public Housing Reform; Change in Admission and Occupancy Requirements.

OMB Approval Number: 2577–0230.

Form Numbers: None.

Description of the need for the information and proposed use: The collection of information implements changes to the admission and occupancy requirements for the public housing and Section 8 assisted housing programs made by the Quality Housing and Work Responsibility (QHWRA) Act 1998 (Title V of the FY 1999 HUD appropriations Act, Pub. L. 105–276, 112 Stat. 2518, approved October 21, 1998), which amended the United States Housing Act of 1937. QHWRA made comprehensive changes to HUD's public housing, Section 8 programs. Some of the changes made by the 1998 Act (i.e., QHWRA) affect public housing only and others affect the Section 8 and public housing programs. These changes cover choice of rent, community service and self-sufficiency in public housing; and admission preferences and determination of income and rent in public housing and Section 8 housing assistance programs.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	4,058	1		24		97,392

Total Estimated Burden Hours: 97,392.

Status: Revision of a Currently Approved Collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 27, 2013.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2013–05082 Filed 3–4–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5685–N–01]

Notice of Proposed Information Collection; Comment Request: Fair Housing Training Survey

AGENCY: Office of Fair Housing and Equal Opportunity, 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.

In 2011, HUD's Office of Fair Housing and Equal Opportunity (FHEO) began an outreach initiative to strengthen FHEO's ties with community-based organizations that work with the public. As part of that initiative, FHEO has held a series of training events around the country to bring together public and private fair housing professionals with community leaders and organizations that work directly with members of the public. By training advocates from organizations that work with underserved communities, FHEO hopes that organizations will be able to recognize and report discrimination in

the communities they serve. FHEO would like to survey conference participants to see if they have used knowledge and/or distributed informational material they obtained at these events. This information will allow FHEO to access the success of the outreach and the worth of conducting this type of outreach in the future.

DATES: *Comments Due Date:* May 6, 2013.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, Room 9120 or the number for the Federal Relay Service (1–800–877–8339).

FOR FURTHER INFORMATION CONTACT: Robert Walker, Director, Education and Outreach Division, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 402–6875 (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: Fair Housing Training Survey.

OMB Control Number, if applicable: 2529–New.

Description of the need for the information and proposed use:

The information collected from these surveys will be used to determine if education and outreach training conferences were useful to the participants and advanced the goals of our office. The hope is that by attending the training these organizations learned more about rights protected by the Fair Housing Act and other fair housing law. The questions also ask about the impact the training has had on the organization's activities. For example, the survey asks whether or not the organization have filed, or helped someone file a fair housing complaint since the training. This information will allow FHEO to assess the success of the education and outreach events and the worth of conducting this type of outreach in the future.

Agency form numbers, if applicable: None.

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 about 100 hours (6000 minutes) to complete the survey. This burden was calculated by estimating that the total number of people to receive the survey will be 700 people per year. The predicted number of people to respond to the survey is 600 people per year. The survey should take around 10 minutes to complete, creating a total time burden of 6000 minutes.

Status of the proposed information collection: This is a new collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: *November 27, 2012.*

John Trasviña,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 2013–05069 Filed 3–4–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5683–N–16]

Notice of Submission of Proposed Information Collection to OMB: Rent Schedule—Low Rent Housing

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been 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.

This information is necessary for HUD to ensure that tenant rents are approved in accordance with HUD administrative procedures, and that ownership remains as described in previous APPS or form HUD–2530 submissions.

DATES: *Comments Due Date:* April 4, 2013.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0012) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov.* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (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 collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposed: Rent Schedule—Low Rent Housing.

OMB Approval Number: 2502–0012.

Form Numbers: HUD 92458.

Description of the need for the information and proposed use:

This information is necessary for HUD to ensure that tenant rents are approved in accordance with HUD administrative

procedures, and that ownership remains as described in previous APPS or form HUD–2530 submissions.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	4,755	1		5.32		25,344

Total estimated burden hours: 25,344.

Status: This is an extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 27, 2013.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2013–05079 Filed 3–4–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5683–N–19]

Notice of Submission of Proposed Information Collection to OMB; Neighborhood Stabilization Program 2 Reporting

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been 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.

This information describes the reporting and recordkeeping requirements of the Neighborhood Stabilization Program 2 (NSP2). The data required includes program level, project level and beneficiary level information collected and reported on by NSP2 grantees. The data identifies who benefits from the NSP2 program and how statutory requirement are satisfied. The respondents are State, local government, non-profit and consortium applicants.

DATES: *Comments Due Date:* April 4, 2013.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2506–0185) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov*. or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (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 collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposed: Neighborhood Stabilization Program 2 Reporting.

OMB Approval Number: 2506–0185.

Form Numbers: None.

Description of the need for the information and proposed use: This information describes the reporting and recordkeeping requirements of the Neighborhood Stabilization Program 2 (NSP2). The data required includes program level, project level and beneficiary level information collected and reported on by NSP2 grantees. The data identifies who benefits from the NSP2 program and how statutory requirement are satisfied. The respondents are State, local government, non-profit and consortium applicants.

	Number of respondents	Annual responses	×	Hours per response	Burden hours
Reporting Burden:	80	4		32	10,240

Total Estimated Burden Hours: 10,240.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 27, 2013.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2013–05072 Filed 3–4–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5687–N–07]

Notice of Proposed Information Collection: Comment Request: Single Family Premium Collection Subsystem-Upfront (SFPCS–U)

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:* May 6, 2013.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, Room 9120 or the number for the Federal Relay Service (1–800–877–8339).

FOR FURTHER INFORMATION CONTACT: Keely E. Stevenson, Branch Chief, Single Family Insurance Operations Branch, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 402–3433 (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: Single Family Premium Collection Subsystem-Upfront (SFPCS–U).

OMB Control Number, if applicable: 2502–0423.

The Single Family Premium Collection Subsystem-Upfront (SFPCS–U) allows the lenders to remit the Upfront Mortgage Insurance Premiums using funds obtained from the mortgagor during the closing of the mortgage transaction at settlement. The SFPCS–U strengthens HUD's ability to manage and process upfront single-family mortgage insurance premium collections and corrections. It also improves data integrity for the Single Family Mortgage Insurance Program. Therefore, the FHA approved lenders transmit UPMIP payment case detail directly to HUD and this information is remitted by HUD to the Department of the Treasury's Pay.gov Automated Clearing House (ACH) applications. The case-level payment information sent to HUD is updated on the Single Family Premium Collection Subsystem-Upfront (SFPCS). The authority for this collection of information is specified in 24 CFR 203.280 and 24 CFR 203.281. The collection of information is also used in calculating refunds due to former FHA mortgagors when they apply for homeowner refunds of the unearned portion of the mortgage insurance premium, 24 CFR 203.283, as appropriate. Without this information the premium collection/monitoring process would be severely impeded, and program data would be unreliable. In general, the lenders use the ACH applications to remit the upfront premium through SFPCS–U to obtain mortgage insurance for the homeowner.

Agency form numbers, if applicable:

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: Hourly rate is based on an estimate of the annual salary of lender clerical staff at $33,634 The number of annual burden hours is 4,880. The number of respondents is 2,711, the number of responses is 32,532, the frequency of response is monthly, and the estimated burden time response is approximated 15 minutes.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: February 26, 2013.

Laura M. Marin,

Acting General Deputy Assistant Secretary for Housing-Acting General Deputy Federal Housing Commissioner.

[FR Doc. 2013–05088 Filed 3–4–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5683–N–18]

Notice of Submission of Proposed Information Collection to OMB: Assisted Living Conversion Program (ALCP) and Emergency Capital Repair Program (ECRP)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been 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.

The Assisted Living Conversion Program and the Emergency Capital Repair Program application submission requirements are necessary to assist HUD in determining an applicant's eligibility and the capacity to carry out a successful conversion of a project or make the necessary emergency repairs. A careful evaluation of the application is conducted to ensure that the Federal Government's interest is protected and to mitigate any possibilities of fraud, waste, or misuse of public funds. The purpose of collecting the application submission information is for the Department to assess the applicant's worthiness, whether the projects meet statutory and regulatory requirements, or make sound judgments regarding the potential risk to the Government.

DATES: *Comments Due Date:* April 4, 2013.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0542) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov.* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the

Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (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 collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposed: Assisted Living Conversion Program (ALCP) and Emergency Capital Repair Program (ECRP).

OMB Approval Number: 2502–0542.

Form Numbers: HUD 424 CB, HUD 92047, HUD–96011, HUD–2994–A, SF–424, SF–424–SUPP., SF–LLL, HUD–2880, HUD–2990–2991, HUD–2530, HUD–96010, HUD–50080–ALCP, SF–269, HUD 92045, HUD 424 CBW, HUD 92046, HUD 50080 ECRP, HUD 27300.

Description of the need for the information and proposed use: The Assisted Living Conversion Program and the Emergency Capital Repair Program application submission requirements are necessary to assist HUD in determining an applicant's eligibility and the capacity to carry out a successful conversion of a project or make the necessary emergency repairs. A careful evaluation of the application is conducted to ensure that the Federal Government's interest is protected and to mitigate any possibilities of fraud, waste, or misuse of public funds. The purpose of collecting the application submission information is for the Department to assess the applicant's worthiness, whether the projects meet statutory and regulatory requirements, or make sound judgments regarding the potential risk to the Government.

	Number of respondents	Annual responses	×	Hours per response	Burden hours
Reporting Burden	31	17.16		1.513	805

Total Estimated Burden Hours: 805.

Status: This is an extension without change of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 27, 2013.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2013–05074 Filed 3–4–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5683–N–17]

Notice of Submission of Proposed Information Collection to OMB: FHA Insured Mortgage Loan Servicing Involving the Loss Mitigation Programs

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been 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.

FHA insurance is an important source of mortgage credit for low and moderate-income borrowers and neighborhoods. Providing assistance, as needed, to enable families to cure their delinquencies and retain their homes stabilizes neighborhoods that might otherwise suffer from deterioration and problems associated with vacant and abandoned properties. Avoidance of foreclosure and the resultant costs also serve to further stabilize the mortgage insurance premiums charged by FHA and the Federal budget receipts generated from those premiums. The information collection request for OMB review seeks to extend OMB 2502–0589, a currently established OMB collection, for an additional three years. Agency form numbers, if applicable: HUD–1 Settlement Statement, HUD–27011 Single Family Application for Insurance Benefits, HUD–90035 Information/Disclosure, HUD–90041 Request for Variance, Pre-foreclosure sale procedure, HUD–90045 Approval to Participate, HUD–90051 Sale Contract Review, HUD–90052 Closing Worksheet, HUD–PA–426 How to Avoid Foreclosure.

DATES: *Comments Due Date:* April 4, 2013.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0589) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov.* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (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 collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposed: FHA Insured Mortgage Loan Servicing Involving the Loss Mitigation Programs.

OMB Approval Number: 2502–0589.

Form Numbers: HUD 27011, HUD 90051, HUD 9539, HUD 50002, HUD 90045, HUD 90035, HUD 90041, HUD 90052, HUD 91022, HUD 50012.

Description of the need for the information and proposed use:

FHA insurance is an important source of mortgage credit for low and moderate-income borrowers and neighborhoods. Providing assistance, as needed, to enable families to cure their delinquencies and retain their homes stabilizes neighborhoods that might otherwise suffer from deterioration and problems associated with vacant and abandoned properties. Avoidance of foreclosure and the resultant costs also serve to further stabilize the mortgage insurance premiums charged by FHA and the Federal budget receipts generated from those premiums.

The information collection request for OMB review seeks to extend OMB 2502–0589, a currently established OMB collection, for an additional three years. Agency form numbers, if applicable: HUD–1 Settlement Statement, HUD–27011 Single Family Application for Insurance Benefits, HUD–90035 Information/Disclosure, HUD–90041 Request for Variance, Pre-foreclosure sale procedure, HUD–90045 Approval to Participate, HUD–90051 Sale Contract Review, HUD–90052 Closing Worksheet, HUD–PA–426 How to Avoid Foreclosure.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	303,718	3.849		1.300		1,520,216

Total Estimated Burden Hours: 1,520,216.

Status: This is an extension without change of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 27, 2013.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2013–05075 Filed 3–4–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5683–N–20]

Notice of Submission of Proposed Information Collection to OMB: Community Development Block Grant Recovery (CDBG–R) Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been 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.

This request identifies the estimated reporting burden associated with the reporting of CDBG–R assisted activities as they are completed and closing out the CDBG–R program. The American Recovery and Reinvestment Act of 2009 (Recovery Act) appropriated $1 Billion in Community Development Block Grant (CDBG) funds to states and local governments that received CDBG funding in Fiscal Year 2008 to carry out, on an expedited basis, eligible activities under the CDBG program. The purpose of the CDBG–R funding was to stimulate the economy through measures that modernized the Nation's infrastructure, improved energy efficiency, and expanded educational opportunities and access to health care. All CDBG–R funds were required to be expended by September 30, 2012. Any CDBG–R funds remaining after that date were recaptured by HUD and returned to Treasury. The Recovery Act did not specify a requirement regarding the date for completion of CDBG–R assisted activities, although grantees were required to give preference to activities that could be started and completed expeditiously. While the CDBG–R expenditure deadline has passed, all CDBG–R assisted activities have not been completed. New activities were added over time when grantees amended their 2008 substantial amendments to add such activities because previously identified activities came in under budget, were identified as imprudent, or did not meet the purposes of the Recovery Act. Once CDBG–R assisted activities meet a national objective and are physically complete, grantees may proceed in closing out their CDBG–R programs. Grantees must complete their final reports in *federalreporting.gov* before closing out their CDBG–R grants. HUD expects grantees to be ready to begin closing out their grants by March 31, 2013. Once final reports are completed in *federalreporting.gov,* grantees may begin the process of closing out their CDBG–R grants. This process requires grantees to submit their final federalreporting.gov report and prepare and submit a CDBG–R Program Grantee Closeout Certification, a CDBG–R closeout checklist, Grant Closeout Agreement, and a Federal Financial Report (SF 425) to local HUD Field Offices. The Recovery Act requires that not later than 10 days after the end of each calendar quarter, each recipient that received recovery funds from a federal agency shall submit a report to that agency that contains: (1) The total amount of recovery funds received from that agency; (2) the amount of recovery funds received that were expended or obligated to projects or activities; and (3) a detailed list of all projects or activities for which recovery funds were expended or obligated, including (A) the name of the project or activity; (B) a description of the project or activity; (C) an evaluation of the completion status of the project or activity; (D) an estimate of the number of jobs created and the number of jobs retained by the project or activity; and (E) for infrastructure investments made by State and local governments, the purpose, total cost, and rationale of the agency for funding the infrastructure investment with funds made available under the Recovery Act and name of the person to contact at the agency if there are concerns with the infrastructure investment. An update of the status of activities identified here must be reported quarterly in federalreporting.gov. In addition, not later than 30 calendar days after the end of each calendar quarter, each agency that made Recovery Act funds available to any recipient shall make the information in reports submitted publicly available by posting the information on a Web site. Grantees that have ongoing CDBG–R assisted activities are required to continue reporting quarterly on those activities until they are completed. Information must be submitted using HUD's IDIS system and in *federalreporting.gov.* Pursuant to Section 1512 of the Recovery Act, CDBG–R grantees must enter the data into IDIS on a quarterly

basis for generation of reports by HUD or other entities. In addition, grantees are required to submit reports in federalreporting.gov on a quarterly basis. Grantees will report in IDIS and federalreporting.gov for CDBG–R assisted activities, recordkeeping requirements, and reporting requirements. The Recovery Act imposes additional reporting requirements including, but not limited to, information on the environmental review process, the expected completion of the activity, the type of activity, and the location of the activity.

DATES: *Comments Due Date: April 4, 2013.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2506–0184) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov.* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (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 collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposed: Community development Block Grant Recovery (CDBG–R) Program.

OMB Approval Number: 2506–0184.

Form Numbers: None.

Description of the need for the information and proposed use: This request identifies the estimated reporting burden associated with the reporting of CDBG–R assisted activities as they are completed and closing out the CDBG–R program. The American Recovery and Reinvestment Act of 2009 (Recovery Act) appropriated $1 Billion in Community Development Block Grant (CDBG) funds to states and local governments that received CDBG funding in Fiscal Year 2008 to carry out, on an expedited basis, eligible activities under the CDBG program. The purpose of the CDBG–R funding was to stimulate the economy through measures that modernized the Nation's infrastructure, improved energy efficiency, and expanded educational opportunities and access to health care. All CDBG–R funds were required to be expended by September 30, 2012. Any CDBG–R funds remaining after that date were recaptured by HUD and returned to Treasury. The Recovery Act did not specify a requirement regarding the date for completion of CDBG–R assisted activities, although grantees were required to give preference to activities that could be started and completed expeditiously. While the CDBG–R expenditure deadline has passed, all CDBG–R assisted activities have not been completed. New activities were added over time when grantees amended their 2008 substantial amendments to add such activities because previously identified activities came in under budget, were identified as imprudent, or did not meet the purposes of the Recovery Act. Once CDBG–R assisted activities meet a national objective and are physically complete, grantees may proceed in closing out their CDBG–R programs. Grantees must complete their final reports in federalreporting.gov before closing out their CDBG–R grants. HUD expects grantees to be ready to begin closing out their grants by March 31, 2013. Once final reports are completed in federalreporting.gov, grantees may begin the process of closing out their CDBG–R grants. This process requires grantees to submit their final federalreporting.gov report and prepare and submit a CDBG–R Program Grantee Closeout Certification, a CDBG–R closeout checklist, Grant Closeout Agreement, and a Federal Financial Report (SF 425) to local HUD Field Offices. The Recovery Act requires that not later than 10 days after the end of each activity; and (E) for infrastructure investments made by State and local governments, the purpose, total cost, and rationale of the agency for funding the infrastructure investment with funds made available under the Recovery Act and name of the person to contact at the agency if there are concerns with the infrastructure investment. An update of the status of activities identified here must be reported quarterly in federalreporting.gov. In addition, not later than 30 calendar days after the end of each calendar quarter, each agency that made Recovery Act funds available to any recipient shall make the information in reports submitted publicly available by posting the information on a Web site. Grantees that have ongoing CDBG–R assisted activities are required to continue reporting quarterly on those activities until they are completed. Information must be submitted using HUD's IDIS system and in federalreporting.gov. Pursuant to Section 1512 of the Recovery Act, CDBG–R grantees must enter the data into IDIS on a quarterly basis for generation of reports by HUD or other entities. In addition, grantees are required to submit reports in federalreporting.gov on a quarterly basis. Grantees will report in IDIS and federalreporting.gov for CDBG–R assisted activities, recordkeeping requirements, and reporting requirements. The Recovery Act imposes additional reporting requirements including, but not limited to, information on the environmental review process, the expected completion of the activity, the type of activity, and the location of the activity.

	Number of respondents	Annual responses	×	Hours per response	Burden hours
Reporting Burden	1,196	4		32	153,088

Total Estimated Burden Hours: 153,088.

Status: Reinstatement with change of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 27, 2013.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2013–05085 Filed 3–4–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5683–N–15]

Notice of Submission of Proposed Information Collection to OMB: Survey and Collection of Information From HUD Healthy Housing Demonstration Grantees

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been 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.

The mission of HUD's Healthy Homes Program is ''To reduce health and safety hazards in housing in a comprehensive and cost effective manner, with a particular focus on protecting the health of children and other sensitive populations in low income households.'' (*Leading Our Nation to Healthier Homes: The Healthy Homes Strategic Plan,* U.S. Department of Housing and Urban Development Office of Healthy Homes and Lead Hazard Control, 2010, p. 7.) An evaluation and summarization of grants awarded under the program was last completed in 2005 (''An Evaluation of *HUD's Healthy Homes Initiative: Current Findings and Outcomes,''* Healthy Housing Solutions, March 5, 2007). The objectives of the Healthy Homes Demonstration (HHD) grants that will be evaluated through the effort described in this notice include:

- Carrying out direct remediation where housing-related hazards may contribute to injury or illness, with a focus on children's health;
- Delivering education and outreach activities to protect children from housing-related hazards; and
- Building capacity to increase the probability that aspects of grant-supported Healthy Homes programs are sustained.

OHHLHC intends to administer an online questionnaire for up to 30 HHD grantees. This questionnaire will capture key project information to supplement information already available in reports and manuscripts from the approximately 54 HHD grants that were awarded from fiscal years 2005 to 2009, including any 2004 grant not included in the earlier evaluation, and any more recent grantee whose grant ends this fiscal year. OHHLHC is especially interested in determining whether any of the grantee's data sets (i.e., resulting from project evaluation) would be of value to OHHLHC for additional analyses. After a review of available reports and manuscripts, OHHLHC anticipates roughly half of these grantees (up to 30) will be asked to complete the online questionnaire. OHHLHC will target those grantees that have carried out the greatest number of interventions, collected the most detailed evaluation data on cost, health and housing impacts and outcomes, and can demonstrate significant capacity-building and sustainable approaches to guide policy development and guidance for future healthy homes efforts. A questionnaire was developed for the 2005 evaluation that captured key information about recruitment/enrollment, assessment, interventions, skills training, and community education/outreach in HHI grantee projects. This questionnaire will be modified for this new data collection effort. The online questionnaire will be administered through a secure Web site.

DATES: *Comments Due Date:* April 4, 2013.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2539–New) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; e-mail Colette Pollard at *Colette.Pollard@hud.gov.* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (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 collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposed: Survey and Collection From HUD Healthy Housing Demonstration Grantees.

OMB Approval Number: 2539–New.

Form Numbers: None.

Description of the need for the information and proposed use: The mission of HUD's Healthy Homes Program is ''To reduce health and safety hazards in housing in a comprehensive and cost effective manner, with a particular focus on protecting the health of children and other sensitive populations in low income households.'' (*Leading Our Nation to Healthier Homes: The Healthy Homes Strategic Plan,* U.S. Department of Housing and Urban Development Office of Healthy Homes and Lead Hazard Control, 2010, p. 7.) An evaluation and summarization of grants awarded under the program was last completed in 2005 (''An Evaluation of *HUD's Healthy Homes Initiative: Current Findings and Outcomes,''* Healthy Housing Solutions, March 5, 2007). The objectives of the Healthy Homes Demonstration (HHD) grants that will be evaluated through the effort described in this notice include:

- Carrying out direct remediation where housing-related hazards may contribute to injury or illness, with a focus on children's health;
- Delivering education and outreach activities to protect children from housing-related hazards; and
- Building capacity to increase the probability that aspects of grant-supported Healthy Homes programs are sustained.

OHHLHC intends to administer an online questionnaire for up to 30 HHD

grantees. This questionnaire will capture key project information to supplement information already available in reports and manuscripts from the approximately 54 HHD grants that were awarded from fiscal years 2005 to 2009, including any 2004 grant not included in the earlier evaluation, and any more recent grantee whose grant ends this fiscal year. OHHLHC is especially interested in determining whether any of the grantee's data sets (i.e., resulting from project evaluation) would be of value to OHHLHC for additional analyses. After a review of available reports and manuscripts, OHHLHC anticipates roughly half of these grantees (up to 30) will be asked to complete the online questionnaire. OHHLHC will target those grantees that have carried out the greatest number of interventions, collected the most detailed evaluation data on cost, health and housing impacts and outcomes, and can demonstrate significant capacity-building and sustainable approaches to guide policy development and guidance for future healthy homes efforts. A questionnaire was developed for the 2005 evaluation that captured key information about recruitment/enrollment, assessment, interventions, skills training, and community education/outreach in HHI grantee projects. This questionnaire will be modified for this new data collection effort. The online questionnaire will be administered through a secure Web site.

TOTAL BURDEN ESTIMATE

Requirement	Number of respondents	Hours per respondent	Total hours	Cost per hour	Labor cost	Startup cost	O&M cost	Total cost
Complete questionnaire	30	16	480	$32.75	$15,720	$0	$0	$15,720
Total	30	16	480	.....	$15,720	$0	$0	$15,720

Status: New collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended

Dated: February 27, 2013.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2013–05080 Filed 3–4–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5696–N–01]

Allocations, Common Application, Waivers, and Alternative Requirements for Grantees Receiving Community Development Block Grant (CDBG) Disaster Recovery Funds in Response to Hurricane Sandy

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice advises the public of the initial allocation of $5,400,000,000 of Community Development Block Grant disaster recovery (CDBG–DR) funds appropriated by the Disaster Relief Appropriations Act, 2013 (Pub. L. 113–2) for the purpose of assisting recovery in the most impacted and distressed areas declared a major disaster due to Hurricane Sandy. This Notice describes applicable waivers and alternative requirements, relevant statutory provisions for grants provided under this Notice, the grant award process, criteria for plan approval, and eligible disaster recovery activities.

DATES: *Effective Date:* March 11, 2013.

FOR FURTHER INFORMATION CONTACT: Stan Gimont, Director, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 7th Street SW., Room 7286, Washington, DC 20410, telephone number 202–708–3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339. Facsimile inquiries may be sent to Mr. Gimont at 202–401–2044. (Except for the ''800'' number, these telephone numbers are not toll-free.) Email inquiries may be sent to *disaster_recovery@hud.gov.*

SUPPLEMENTARY INFORMATION:

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I. Allocation

The Disaster Relief Appropriations Act, 2013 (Pub. L. 113–2, approved January 29, 2013)(Appropriations Act) makes available $16,000,000,000 in Community Development Block Grant (CDBG) funds for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas resulting from a major disaster declared pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (42 U.S.C. 5121 *et seq.*) (Stafford Act), due to Hurricane Sandy and other eligible events in calendar years 2011, 2012, and 2013. The law provides that funds shall be awarded directly to a State or unit of general local government (UGLG) (hereafter local government) at the discretion of the Secretary. Unless noted otherwise, the term ''grantee'' refers to any jurisdiction receiving a direct award under from HUD under this Notice.

To comply with statutory direction that funds be used for disaster-related expenses in the most impacted and distressed areas, HUD computes allocations based on the best available data that cover all the eligible affected areas. This Notice allocates funds based on unmet housing and economic revitalization needs, but not infrastructure restoration needs as FEMA damage estimates are very preliminary as of the date of this Notice.

Based on a review of the impacts from Hurricane Sandy, and estimates of unmet need calculated by the Department, this Notice provides the following Round 1 awards:

TABLE 1—ROUND 1 ALLOCATIONS UNDER PUBLIC LAW 113–2

FEMA Disaster No.	State	Grantee	Allocation
4085	New York	New York City	$1,772,820,000
4085	New York	New York State	1,713,960,000
4086	New Jersey	New Jersey	1,829,520,000
4087	Connecticut	Connecticut	71,820,000
4089	Rhode Island	Rhode Island	3,240,000
4091	Maryland	Maryland	8,640,000
Total			5,400,000,000

Table 2 shows the ''most impacted and distressed'' counties impacted by Hurricane Sandy. While these funds may also be used by states to address remaining unmet needs in declared counties impacted by Hurricane Irene and Tropical Storm Lee in 2011, at least 80 percent of the funds provided under this Notice must address unmet needs within the ''most impacted and distressed'' counties identified in Table 2.

TABLE 2—MOST IMPACTED AND DISTRESSED COUNTIES WITHIN WHICH FUNDS MAY BE EXPENDED

Grantee	Counties within which CDBG–DR funds may be expended	Most impacted and distressed counties	Minimum amount that must be expended in most impacted nd distressed counties (percent)
New York City	All Counties	All Counties	100
New York	Nassau, Suffolk, Rockland, Westchester, Ulster, Orange, Putnam, Sullivan, Schoharie, Tioga, Broome, Greene, and all Counties in New York City.	Nassau, Suffolk, Rockland	80
New Jersey	All Counties	Ocean, Monmouth, Atlantic, Hudson, Bergen, Middlesex, Cape May, Union, Essex.	80
Connecticut	Fairfield, Mashantucket Pequot Indian Reservation, Middlesex, New Haven, New London.	Fairfield, New Haven	80
Rhode Island	Washington, Newport	Washington	80
Maryland	Somerset	Somerset	100

In addition to the funds allocated in this Notice, and in accordance with the Appropriations Act, $10,000,000 will be transferred to the Department's Office of Community Planning and Development (CPD), Program Office Salaries and Expenses, for necessary costs, including information technology costs, of administering and overseeing CDBG–DR funds made available under the Appropriations Act; $10,000,000 will also be transferred to the Office of the Inspector General for necessary costs of overseeing and auditing CDBG–DR funds made available under the Appropriations Act.

A detailed explanation of HUD's allocation methodology is provided at Appendix A. As more detailed and complete damage assessments become available, HUD will conduct an additional review of unmet long-term disaster recovery needs. This review will inform a second allocation of funds to address the effects of Hurricane Sandy. A forthcoming allocation will address other qualifying disasters that occurred in 2011 or 2012. The Department will establish, at a future date, a policy to address qualifying events in 2013.

Each grantee receiving an allocation under this Notice must submit an initial Action Plan for Disaster Recovery no later than 90 days after the effective date of this Notice. However, grantees are encouraged to submit their Action Plans as soon as possible. HUD will only approve Action Plans that meet the specific criteria identified in this Notice. For more information on the Action Plan requirements, see paragraph A.1 under section VI of this Notice: ''Applicable Rules, Statutes, Waivers, and Alternative Requirements.''

II. Use of Funds

The Appropriations Act requires funds to be used only for specific disaster-related purposes. The law also requires that prior to the obligation of funds, a grantee shall submit a plan detailing the proposed use of funds, including criteria for eligibility and how the use of these funds will address disaster relief, long-term recovery, restoration of infrastructure and housing and economic revitalization in the most impacted and distressed areas. Thus, in an Action Plan for Disaster Recovery, grantees must describe uses and activities that: (1) are authorized under title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.) (HCD Act) or allowed by a waiver or alternative requirement published in this Notice; and (2) respond to a disaster-related impact. To help meet these requirements, grantees must conduct an assessment of community impacts and unmet needs to guide the development and prioritization of planned recovery activities. For more guidance on the needs assessment and the creation of the Action Plan, see paragraph A.1 under section VI of this Notice.

Additionally, as provided by the HCD Act, funds may be used as a matching requirement, share, or contribution for any other Federal program when used to carry out an eligible CDBG–DR activity. This includes programs or activities administered by the Federal Emergency Management Agency (FEMA) or the U.S. Army Corps of Engineers (USACE).

III. Timely Expenditure of Funds and Prevention of Waste, Fraud, Abuse, and Duplication of Benefits

To ensure the timely expenditure of funds, section 904(c) under Title IX of the Appropriations Act requires that all funds be expended within two years of the date HUD obligates funds to a grantee (funds are obligated to a grantee upon HUD's signing of the grantee's CDBG–DR grant agreement). Action Plans must demonstrate how funds will be fully expended within two years of obligation. For any funds that the grantee believes will not be expended by the deadline, it must submit a letter to HUD justifying why it is necessary to extend the deadline for a specific portion of funds. The letter must detail the compelling legal, policy, or operational challenges for any such waiver, and must also identify the date by when the specified portion of funds will be expended. HUD will forward the request to the Office of Management and Budget (OMB) and publish any approved waivers in the **Federal Register** once granted. Waivers to extend the expenditure deadline may be granted by OMB in accordance with guidance to be issued by OMB, but grantees are cautioned that such waivers may not be approved. Funds remaining in the grantee's line of credit at the time of its expenditure deadline will be returned to the U.S. Treasury, or if before September 30, 2017, will be recaptured by HUD. The Appropriations Act requires that HUD obligate all funds not later than September 30, 2017. Grantees must continue to meet the requirements for Federal cash management at 24 CFR 85.20(a)(7).

In addition to the above, the Appropriations Act requires the Secretary to certify, in advance of signing a grant agreement, that the grantee has in place proficient financial controls and procurement processes and has established adequate procedures to prevent any duplication of benefits as defined by section 312 of the Stafford Act, ensure timely expenditure of funds, maintain comprehensive Web sites regarding all disaster recovery activities assisted with these funds, and detect and prevent waste, fraud, and abuse of funds. Departmental guidance to assist in preventing a duplication of benefits is provided in a notice published in the **Federal Register** at 76 FR 71060 (November 16, 2011) and in paragraph A.21 under section VI of this Notice. To provide a basis for the Secretary to make the certification, each grantee must submit documentation to the Department demonstrating its compliance with the above requirements. For a complete listing of the required documentation, see paragraph A.1.i under section VI of this Notice.

Additionally, this Notice requires grantees to submit to the Department a projection of expenditures and outcomes to ensure funds are expended in a timely manner. The projections must be based on each quarter's expected performance—beginning the quarter funds are available to the grantee and continuing each quarter until all funds are expended. Each grantee must amend its Action Plan to include these projections within 90 days of Action Plan approval. Action Plans must also be amended to reflect any subsequent changes, updates, or revision of the projections. Amending Action Plans to accommodate these changes is not considered to be a substantial amendment. Guidance on the preparation of projections is available on HUD's Web site under the Office of Community Planning and Development, Disaster Recovery Assistance (herein also referred to as the CPD Disaster Recovery Web site). This will enable HUD, the public, and the grantee, to track proposed versus actual performance. For more information on the projection requirements, see paragraph A.1.l under section VI of this Notice.

Grantees are also required to ensure all contracts (with subrecipients, recipients, and contractors) clearly stipulate the period of performance or the date of completion. In addition, grantees must enter expected completion dates for each activity in HUD's Disaster Recovery Grant Reporting (DRGR) system. When target dates are not met, grantees are required to explain why in the activity narrative. For additional guidance on DRGR system reporting requirements, see paragraph A.2 under section VI of this Notice. More information on the timely expenditure of funds is included in paragraphs A.24–27 under section VI of this Notice.

Other reporting, procedural, and monitoring requirements are discussed under ''Grant Administration'' in section VI of this Notice. The Department will institute risk analysis and on-site monitoring of grantee management as well as collaborate with the HUD Office of Inspector General to plan and implement oversight of these funds.

IV. Authority To Grant Waivers

The Appropriations Act authorizes the Secretary to waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or the use by the recipient of these funds (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment). Waivers and alternative requirements are based upon a determination by the Secretary that good cause exists and that the waiver or alternative requirement is not inconsistent with the overall purposes of title I of the HCD Act. Regulatory waiver authority is also provided by 24 CFR 5.110, 91.600, and 570.5.

V. Overview of Grant Process

To begin expenditure of CDBG–DR funds, the following expedited steps are necessary:

- Grantee adopts citizen participation plan for disaster recovery in accordance with the requirements of this Notice;
- Grantee consults with stakeholders, including required consultation with affected, local governments and public housing authorities (as identified in section VI of this Notice);
- Within 30 days of the effective date of this Notice (or when the grantee submits its Action Plan, whichever is sooner), grantee submits evidence that it has in place proficient financial controls and procurement processes and has established adequate procedures to prevent any duplication of benefits as defined by section 312 of the Stafford Act, ensure timely expenditure of funds, maintain comprehensive Web sites regarding all disaster recovery activities assisted with these funds, and detect and prevent waste, fraud, and abuse of funds;
- Grantee publishes its Action Plan for Disaster Recovery on the grantee's official web site for no less than 7 calendar days to solicit public comment;
- Grantee responds to public comment and submits its Action Plan (which includes Standard Form 424 (SF–424) and certifications) to HUD no later than 90 days after the effective date of this Notice;
- HUD expedites review of Action Plan (allotted 45 days from date of receipt; however, completion of review is anticipated much sooner) and approves the Plan according to criteria identified in this Notice;
- HUD sends an Action Plan approval letter, grant conditions, and signed grant agreement to the grantee. If the Action Plan is not approved, a letter will be sent identifying its deficiencies; the grantee must then re-submit the Action Plan within 45 days of the notification letter;

• Grantee ensures that the HUD-approved Action Plan is posted on its official Web site;

• Grantee signs and returns the fully executed grant agreement;

• HUD establishes the proper amount in a line of credit for the grantee;

• Grantee requests and receives DRGR system access (if the grantee does not already have it);

• If it has not already done so, grantee enters the activities from its published Action Plan into DRGR and submits it to HUD within the system (funds can be drawn from the line of credit only for activities that are established in DRGR);

• The grantee may draw down funds from the line of credit after the Responsible Entity completes applicable environmental review(s) pursuant to 24 CFR part 58 (or paragraph A.20 under section VI of this Notice) and, as applicable, receives from HUD or the State an approved Request for Release of Funds and certification;

• Grantee begins to draw down funds within 60 days of receiving access to its line of credit;

• Grantee amends its published Action Plan to include its projection of expenditures and outcomes within 90 days of the Action Plan approval; and

• Grantee updates its full consolidated plan to reflect disaster-related needs no later than its Fiscal Year 2015 consolidated plan update.

VI. Applicable Rules, Statutes, Waivers, and Alternative Requirements

This section of the Notice describes requirements imposed by the Appropriations Act, as well as applicable waivers and alternative requirements. For each waiver and alternative requirement described in this Notice, the Secretary has determined that good cause exists and the action is not inconsistent with the overall purpose of the HCD Act. The waivers and alternative requirements provide additional flexibility in program design and implementation to support full and swift recovery following Hurricane Sandy, while also ensuring that statutory requirements unique to this appropriation are met. As a result, the following requirements apply only to the CDBG–DR funds appropriated in the Appropriations Act, and not to funds provided under the annual formula State or Entitlement CDBG programs, or those provided under any other component of the CDBG program, such as the Section 108 Loan Guarantee Program, the Neighborhood Stabilization Program, or any prior CDBG–DR appropriation.

Grantees may request additional waivers and alternative requirements from the Department as needed to address specific needs related to their recovery activities. Except where noted, waivers and alternative requirements described below apply to all grantees under this Notice. Under the requirements of the Appropriations Act, regulatory waivers must be published in the **Federal Register** no later than five days before the effective date of such waiver.

Except as described in this Notice, statutory and regulatory provisions governing the State CDBG program shall apply to any State receiving an allocation under this Notice while statutory and regulatory provisions governing the Entitlement CDBG program shall apply to New York City. Applicable statutory provisions can be found at 42 U.S.C. 5301 *et seq.* Applicable State and Entitlement regulations can be found at 24 CFR part 570.

References to the Action Plan in these regulations shall refer to the Action Plan required by this Notice. All references in this Notice pertaining to timelines and/or deadlines are in terms of calendar days unless otherwise noted. The date of this Notice shall mean the effective date of this Notice unless otherwise noted. All references to ''substantial damage'' and ''substantial improvement'' shall be as defined in 44 CFR 59.1 unless otherwise noted.

A. Grant Administration.

1. *Action Plan for Disaster Recovery waiver and alternative requirement.* The requirements for CDBG actions plans, located at 42 U.S.C. 12705(a)(2), 42 U.S.C. 5304(a)(1), 42 U.S.C. 5304(m), 42 U.S.C. 5306(d)(2)(C)(iii), 24 CFR 91.220, and 91.320 are waived for funds provided under the Appropriations Act. Instead, each grantee must submit to HUD an Action Plan for Disaster Recovery. This streamlined Plan will allow grantees to more quickly and effectively implement disaster recovery programs while conforming to statutory requirements. During the course of the grant, HUD will monitor the grantee's actions and use of funds for consistency with the Plan, and meeting the performance and timeliness objectives therein. Per the Appropriations Act, and in addition to the requirements at 24 CFR 91.500, the Secretary may disapprove an Action Plan if it is determined that the Plan does not satisfy all of the required elements identified in this Notice.

a. *Action Plan.* The Action Plan must identify the proposed use(s) of the grantee's allocation, including criteria for eligibility, and how the uses address long-term recovery needs. To develop and submit an acceptable Action Plan in a timely manner, a grantee may elect to program or budget only a portion of the grantee's CDBG–DR award in an Action Plan. Funds dedicated for uses not described in accordance with paragraphs b (applicable to State grantees) or c (applicable to UGLG grantees) under this section will not be obligated until the grantee submits, and HUD approves, an Action Plan amendment programming the use of those funds at the necessary level of detail. Although a grantee may submit a partial Action Plan, the partial Action Plan must be amended one or more times until it describes uses for 100 percent of the grantee's CDBG–DR award, subject to the limitations that HUD may not obligate Appropriations Act funds after September 30, 2017 and the last date that grantees may submit an amendment is June 1, 2017. The requirement to expend funds within two years of the date of obligation will be enforced relative to the activities funded under each obligation, as applicable.

The Action Plan must contain:

(1) An impact and unmet needs assessment. Each grantee must develop a needs assessment to understand the type and location of community needs to enable it to target limited resources to areas with the greatest need. At a minimum, the needs assessment must evaluate three core aspects of recovery—housing, infrastructure, and the economy (*e.g.,* estimated job losses). The assessment of emergency shelter needs and housing needs must address interim and permanent; owner and rental; single family and multifamily; public, HUD-assisted, affordable, and market rate. For purposes of this Notice, HUD-Assisted Multifamily Housing is defined as housing that: (1)(a) is part of a multifamily housing property (defined as five units or more), and (b) assisted by FHA insurance; or (2)(a) Housing that receives project-based rental assistance under HUDs' section 202, 811 or Section 8 programs; or (b) receives other HUD project-based rental assistance (e.g., Rent Supplement contracts, Rental Assistance Payments (RAP) contract Interest Reduction Payments (IRP) Agreements; or (3) properties that have active Deed Restrictions and/or a Use Agreement as a result of past HUD assistance.

The assessment must also take into account the various forms of assistance available to, or likely to be available to, affected communities and individuals (including estimated insurance and eligible FEMA, SBA, or other Federal assistance) to identify disaster recovery needs that are not likely to be addressed by other sources of funds. Grantees must

use the best, most recent available data (*e.g.,* from FEMA and SBA), cite data sources, and estimate the portion of need likely to be addressed by insurance proceeds, other Federal assistance, or any other funding source.

Impacts must be described by type at the lowest geographic level practicable (*e.g.,* city/county level or lower if available). For example, most needs estimates will have a count of businesses, homeowners, and renters that are likely to have difficulty recovering within a neighborhood and community. Grantees must pay special attention to neighborhoods with high percentages of damaged homes and provide a demographic analysis (*e.g.,* race, ethnicity, disability, age, tenure, income, home value, structure type) in those neighborhoods to identify any special needs that will need to be addressed. The needs assessment must also identify the types of businesses (including the North American Industry Classification System code, the standard used by Federal statistical agencies in classifying business establishments and available at *www.census.gov/eos/www/naics/*) most impacted with a description of their likely barriers to recovery. In addition, a needs assessment must take into account the costs of incorporating mitigation and resiliency measures to protect against future hazards. Examples of disaster recovery needs assessments can be found on the CPD Disaster Recovery Web site.

Grantees may obtain data on impacts and assistance provided that can be used to (a) Support identifying individuals likely to need recovery assistance; (b) prevent duplication of benefits risk at time of program design; and (c) assist grantees with their unmet needs assessment by contacting Juan Gil (FEMA) via email at *juan.gil@fema.dhs.gov* or by calling (940) 898–5141 and Frank Adinolfe (SBA) via email at *frank.adinolfe@sba.gov* or by calling (202) 205–6734. HUD will also provide grantees with neighborhood level aggregate data to assist with planning.

Disaster recovery needs evolve over time as the full impact of a disaster is realized and costs of damages transition from estimated to actual. Remaining recovery needs also evolve over time as they are met by dedicated resources. As a result, the needs assessment and Action Plan must be amended as conditions change and additional needs are identified. CDBG–DR funds may be used to reimburse the costs of conducting the needs assessment.

(2) A description of the connection between identified unmet needs and the allocation of CDBG–DR resources by the grantee. Such description must demonstrate a proportionate allocation of resources relative to areas and categories (i.e., housing, economic revitalization, infrastructure) of greatest needs;

(3) A description of how the grantee will promote (a) sound, sustainable long-term recovery planning informed by a post-disaster evaluation of hazard risk, especially land-use decisions that reflect responsible flood plain management and take into account possible sea level rise (for example, by using the new FEMA floodplain maps and designs applying the new Advisory Based Flood Elevations (ABFE) or higher), and (b) how it will coordinate with other local and regional planning efforts to ensure consistency;

(4) A description of how the grantee will leverage CDBG–DR funds with funding provided by other Federal, state, local, private, and non-profit sources to generate a more effective and comprehensive recovery. Examples of other Federal sources are those provided by HUD, FEMA (specifically the Public Assistance Program, Individual Assistance Program, and Hazard Mitigation Grant Program), SBA (specifically the Disaster Loans program), U.S. Department of Transportation, USACE, U.S. Environmental Protection Agency, and the U.S. Department of Health and Human Services. The grantee must maximize leveraging of CDBG–DR funds for the entire recovery. Leveraged funds shall be identified for each activity, as applicable, in the DRGR system;

(5) A description of how the grantee's programs or activities will attempt to protect people and property from harm, and how the grantee will encourage construction methods that emphasize high quality, durability, energy efficiency, a healthy indoor environment, sustainability, and water or mold resistance, including how it will support adoption and enforcement of modern building codes and mitigation of hazard risk, including possible sea level rise, storm surge, and flooding, where appropriate. All rehabilitation, reconstruction, and new construction should be designed to incorporate principles of sustainability, including water and energy efficiency, resilience and mitigating the impact of future disasters. Whenever feasible, grantees should follow best practices such as those provided by the U.S. Department of Energy Home Energy Professionals: *Professional Certifications and Standard Work Specifications.*

To foster the rebuilding of more resilient neighborhoods and communities, HUD strongly encourages grantees to consider sustainable rebuilding scenarios such as the use of different development patterns, infill development and its reuse, alternative neighborhood designs, and the use of green infrastructure. The Partnership for Sustainable Communities is an interagency partnership between HUD, the Department of Transportation, and the Environmental Protection Agency. The Partnership for Sustainable Communities' six Livability Principles should serve as a guide to grantees working in areas that were substantially destroyed. When grantees seek to rebuild such areas, grantees should describe how they will consider sustainable urban design and construction in their redevelopment planning process. The Livability Principles can be found at the Partnership for Sustainable Communities' Web site *www.sustainablecommunities.gov.*

At a minimum, HUD is requiring the following construction standards:

(a) Green Building Standard for Replacement and New Construction of Residential Housing. Grantees must meet the Green Building Standard in this subparagraph for: (i) all new construction of residential buildings; and (ii) all replacement of substantially-damaged residential buildings. Replacement of residential buildings may include reconstruction (i.e., demolishing and re-building a housing unit on the same lot in substantially the same manner) and may include changes to structural elements such as flooring systems, columns or load bearing interior or exterior walls.

(b) For purposes of this Notice, the Green Building Standard means the grantee will require that all construction covered by subparagraph (a), above, meet an industry-recognized standard that has achieved certification under at least one of the following programs: (i) ENERGY STAR (Certified Homes or Multifamily High Rise); (ii) Enterprise Green Communities; (iii) LEED (NC, Homes, Midrise, Existing Buildings O&M, or Neighborhood Development); (iv) ICC–700 National Green Building Standard; (v) EPA Indoor AirPlus (ENERGY STAR a prerequisite); or (vi) any other equivalent comprehensive green building program, including regional programs such as those operated by the New York State Energy Research and Development Authority or the New Jersey Clean Energy Program.

(c) Standards for rehabilitation of non-substantially-damaged residential buildings. For rehabilitation other than

that described in subparagraph (a), above, grantees must follow the guidelines specified in the HUD CPD Green Building Retrofit Checklist, available on the CPD Disaster Recovery Web site. Grantees must apply these guidelines to the extent applicable to the rehabilitation work undertaken, including the use of mold resistant products when replacing surfaces such as drywall. When older or obsolete products are replaced as part of the rehabilitation work, rehabilitation is required to use ENERGY STAR-labeled, WaterSense-labeled, or Federal Energy Management Program (FEMP)-designated products and appliances. For example, if the furnace, air conditioner, windows, and appliances are replaced, the replacements must be ENERGY STAR-labeled or FEMP-designated products; WaterSense-labeled products (*e.g.,* faucets, toilets, showerheads) must be used when water products are replaced. Rehabilitated housing may also implement measures recommended in a Physical Condition Assessment (PCA) or Green Physical Needs Assessment (GPNA).

(d) Implementation: (i) For construction projects completed, under construction, or under contract prior to the date that assistance is approved for the project, the grantee is encouraged to apply the applicable standards to the extent feasible, but the Green Building Standard is not required; (ii) for specific required equipment or materials for which an ENERGY STAR- or WaterSense-labeled or FEMP-designated product does not exist, the requirement to use such products does not apply.

(e) HUD encourages grantees to implement green infrastructure policies to the extent practicable. Additional tools for green infrastructure are available at the Environmental Protection Agency's water Web site; *Indoor AirPlus* Web site; Healthy Indoor Environment *Protocols for Home Energy Upgrades* Web site; and *ENERGY STAR* Web site: *www.epa.gov/greenbuilding.*

(6) A description of how the grantee will identify and address the rehabilitation (as defined at 24 CFR 570.202), reconstruction, and replacement of the following types of housing affected by the disaster: public housing (including administrative offices), HUD-assisted housing (defined at subparagraph (1), above), McKinney-Vento funded shelters and housing for the homeless—including emergency shelters and transitional and permanent housing for the homeless, and private market units receiving project-based assistance or with tenants that participate in the Section 8 Housing Choice Voucher Program. As part of this requirement, the grantee must identify how it will address the rehabilitation, mitigation, and new construction needs of each impacted Public Housing Authority (PHA) within its jurisdiction. The grantee must work directly with the PHA in identifying necessary costs and ensure that adequate funding is dedicated to addressing the unmet needs of damaged public housing. In its Action Plan, each grantee must set aside funding to specifically address the needs described in this subparagraph; Grantees are reminded that public housing is eligible for FEMA Public Assistance and must ensure that there is no duplication of benefits when using CDBG-DR funds to assist public housing. Information on the public housing agencies impacted by the disaster is available on the Department's *Web site*;

(7) A description of how the grantee will encourage the provision of housing for all income groups that is disaster-resistant, including a description of the activities it plans to undertake to address: (a) The transitional housing, permanent supportive housing, and permanent housing needs of individuals and families (including subpopulations) that are homeless and at-risk of homelessness; (b) the prevention of low-income individuals and families with children (especially those with incomes below 30 percent of the area median) from becoming homeless, and (c) the special needs of persons who are not homeless but require supportive housing (*e.g.,* elderly, persons with disabilities, persons with alcohol or other drug addiction, persons with HIV/AIDS and their families, and public housing residents, as identified in 24 CFR 91.315(e) or 91.215(e) as applicable). Grantees must also assess how planning decisions may affect racial, ethnic, and low-income concentrations, and ways to promote the availability of affordable housing in low-poverty, non-minority areas where appropriate and in response to disaster-related impacts.

(8) A description of how the grantee plans to minimize displacement of persons or entities, and assist any persons or entities displaced;

(9) A description of how the grantee will manage program income (*e.g.,* whether subrecipients may retain it), and the purpose(s) for which it may be used. Waivers and alternative requirements related to program income can be found in this Notice at paragraphs A.2 and A.17 of section VI;

(10) A description of monitoring standards and procedures that are sufficient to ensure program requirements, including nonduplication of benefits, are met and that provide for continual quality assurance and investigation. Some of this information may be adopted from the grantee's submission of information that is required for the Department's certification (see paragraph A.1.i, below; guidance on the prevention of duplication of benefits is available at paragraph A.21 of section VI). However, a grantee may need to include additional details to fully inform the public of the grantee's standards and procedures. Grantees must also describe their required internal audit function with an organizational diagram showing that responsible audit staff report independently to the chief officer or board of the organization designated to administer the CDBG–DR award (typically, the organization is designated by a chief elected official);

(11) A description of the mechanisms and/or procedures that are in place or will be put into place to detect and prevent fraud, abuse, and mismanagement of funds (including potential conflicts of interest);

(12) A description demonstrating the adequacy of the grantee's capacity, and the capacity of any UGLG or other organization expected to carry out disaster recovery programs (this assessment shall include a description of how the grantee will provide for increasing the capacity of UGLGs or other organizations, as needed and where capacity deficiencies (e.g., outstanding Office of Inspector General audit findings) have been identified. Grantees are responsible for providing adequate technical assistance to subrecipients or subgrantees to ensure the timely, compliant, and effective use of funds. Although UGLGs or other organizations may carry out disaster recovery programs and projects, each grantee under this Notice remains legally and financially accountable for the use of all funds and may not delegate or contract to any other party any inherently governmental responsibilities related to management of the funds, such as oversight (also see paragraph A.10 under section VI), policy development, and financial management;

b. *Funds awarded to a State.* A State's Action Plan, or partial Action Plan, shall describe the specific programs or activities the State will carry out directly, and/or how it will distribute funds to UGLGs (i.e., its method of distribution). Each Plan must also describe how the State's needs assessment informs the allocation(s) identified in the Plan, and how unmet needs that have been identified but not

yet addressed will be addressed in a subsequent amendment to the Plan.

In addition, for each program or activity that will be carried out by the State, the Action Plan or partial Action Plan must describe: (1) The projected use of the CDBG–DR funds, including the entity administering the program/activity, budget, and geographic area; (2) the threshold factors or applicant eligibility criteria, grant size limits, and proposed start and end dates; (3) how the projected use will meet CDBG eligibility criteria and a national objective; (4) how the projected use relates to a specific impact of the disaster and will result in long-term recovery; and (5) estimated and quantifiable performance outcomes (i.e., a performance measure) relative to the identified unmet need.

When the State uses a method of distribution to allocate funds to UGLGs, it must describe all criteria used to determine the distribution, including the relative importance of each criterion.

c. *Funds awarded directly to an UGLG.* The UGLG's Action Plan, or partial Action Plan, shall describe specific programs and/or activities it will carry out directly or through subrecipients, including other local governments. Each Plan must also describe how the UGLG's needs assessment informed the allocation(s) identified in the Plan, and how unmet needs that have been identified but not yet addressed will be addressed in a subsequent amendment to the Plan.

In addition, for each program or activity that will be carried out by the UGLG or through a subrecipient, the Action Plan or partial Action Plan must describe: (1) The projected use of the CDBG–DR funds, including the entity administering the program/activity, budget, and geographic area; (2) the threshold factors or applicant eligibility criteria, grant size limits, and proposed start and end dates; (3) how the projected use will meet CDBG eligibility criteria and a national objective; (4) how the projected use relates to a specific impact of the disaster and will result in long-term recovery; and (5) estimated and quantifiable performance outcomes (i.e., a performance measure) relative to the identified unmet need.

d. *Clarification of disaster-related activities.* All CDBG–DR activities must clearly address an impact of the disaster for which funding was appropriated. This means each activity must be CDBG-eligible (or receive a waiver), meet a national objective, and address a direct or indirect impact from the disaster in a county covered by a Presidential disaster declaration and cited in Table 2 of this Notice. Additional details on disaster-related activities are provided under Section VI, parts B through D.

(1) Housing. Typical housing activities include new construction and rehabilitation of single family or multifamily units (including garden apartments, condominiums, and units that participate in a housing cooperative). Most often, grantees use CDBG–DR funds to rehabilitate damaged homes and rental units; rehabilitation activities may include the costs associated with mold remediation. However, grantees may also fund new construction or rehabilitate units *not* damaged by the disaster if the activity clearly addresses a disaster-related impact and is located in a disaster-affected area. This impact can be demonstrated by the disaster's overall effect on the quality, quantity, and affordability of the housing stock and the resulting inability of the existing stock to meet post-disaster needs and population demands.

(2) Infrastructure. Typical infrastructure activities include the rehabilitation, replacement, or relocation of damaged public facilities and improvements.

(3) Economic Revitalization. Without the return of businesses and jobs to a disaster-impacted area, recovery may be impossible. Therefore, HUD strongly encourages grantees to envision economic revitalization as a cornerstone to long-term recovery. Economic revitalization is not limited to activities that are ''special economic development'' activities under the HCD Act, or to activities that create or retain jobs. For CDBG–DR purposes, economic revitalization can include any activity that demonstrably restores and improves the local or regional economy, such as addressing job losses. Examples of eligible activities include providing loans and grants to businesses, funding job training, building education facilities to teach technical skills, making improvements to commercial/retail districts, and financing other efforts that attract/retain workers in devastated communities.

Local and regional economic recoveries are typically driven by small businesses. To target assistance to small businesses, the Department is instituting an alternative requirement to the provisions at 42 U.S.C. 5305(a) to prohibit grantees from assisting businesses, including privately owned utilities, that do not meet the definition of a small business as defined by SBA at 13 CFR part 121.

All economic revitalization activities must address an economic impact(s) caused by the disaster (*e.g.,* loss of jobs). Through its needs assessment and Action Plan, the grantee must clearly identify the economic loss or need resulting from the disaster, and how the proposed activities will address that loss/need.

(4) Preparedness and Mitigation. The Appropriations Act states that funds shall be used for recovering from a Presidentially-declared major disaster. As such, all activities must respond to the impacts of the declared disaster. HUD strongly encourages grantees to incorporate preparedness and mitigation measures into all rebuilding activities, which helps to ensure that communities recover to be safer, stronger, and more resilient. Incorporation of these measures also reduces costs in recovering from future disasters. Mitigation measures that are not incorporated into rebuilding activities must be a necessary expense related to disaster relief, long-term recovery, and restoration of infrastructure, housing, or economic revitalization. Furthermore, the costs associated with these measures may not prevent the grantee from meeting unmet needs.

(5) Connection to the Disaster. Each grantee must document how each activity is connected to the disaster for which it is receiving CDBG assistance. In regard to physical losses, damage or insurance estimates are often the most effective tool for demonstrating the connection to the disaster. For economic or other non-physical losses, post-disaster analyses or assessments may document the relationship between the loss and the disaster.

Grantees are not limited in their recovery to returning to pre-disaster conditions. Rather, HUD encourages grantees to carry out activities that not only address disaster-related impacts, but leave communities sustainably positioned to meet the needs of their post-disaster populations and to further prospects for growth.

e. *Use of funds for disasters not covered by the Appropriations Act.* CDBG–DR funds awarded under this Notice are limited to activities that respond to the disasters identified in section I, Table 1, and areas that have Presidential disaster declarations for Hurricane Irene and Tropical Storm Lee as described in section I, Allocation. However, funds awarded in this Notice may be used to address an unmet need that arose from a previous disaster, which was exacerbated by a disaster cited in this Notice. If an impact or need originating from a disaster identified in this Notice is subsequently exacerbated by a future disaster, funds under this Notice may also be used to address the resulting exacerbated unmet need.

f. *Use of the urgent need national objective.* The certification requirements for the documentation of urgent need, located at 24 CFR 570.208(c) and 24 CFR 570.483(d), are waived for the grants under this Notice until two years after the date HUD obligates funds to a grantee for the activity. In the context of disaster recovery, these standard requirements may prove burdensome and redundant. Since the Department only provides CDBG–DR awards to grantees with documented disaster-related impacts (as supported by data provided by FEMA, SBA, and other sources), and each grantee is limited to spending funds only in counties with a Presidential disaster declaration of recent origin respective to each appropriation, the following temporary, streamlined alternative requirement recognizes the inherent urgency in addressing the serious threat to community welfare following a major disaster.

Grantees need not issue formal certification statements to qualify an activity as meeting the urgent need national objective. Instead, each grantee receiving a direct award under this Notice must document how all programs and/or activities funded under the urgent need national objective respond to a disaster-related impact identified by the grantee. This waiver and alternative requirement allows grantees to more effectively and quickly implement disaster recovery programs. Grantees must reference in their Action Plan the type, scale, and location of the disaster-related impacts that each program and/or activity is addressing.

Grantees must identify these disaster-related impacts in their Action Plan needs assessment. The needs assessment must be updated as new or more detailed/accurate disaster-related impacts are known. As a reminder, at least 50 percent of each grantee's CDBG–DR grant award must be used for activities that benefit low- and moderate-income persons.

g. *Clarity of the Action Plan.* All grantees must include sufficient information so that citizens, UGLGs (where applicable), and other eligible subgrantees, subrecipients, or applicants will be able to understand and comment on the Action Plan and, if applicable, be able to prepare responsive applications to the grantee. The Action Plan must include a single chart or table that illustrates, at the most practical level, how all funds programmed by the Action Plan are budgeted (*e.g.,* by program, subgrantee, grantee-administered activity, or other category).

h. *Review and Approval of the Action Plan.* For funds provided under the Appropriations Act, 24 CFR 91.500 has been augmented with the following requirements. The initial Action Plan must be submitted to HUD (including Standard Form 424 (SF–424) and certifications) within 90 days of the date of this Notice. HUD will expedite its review of each Action Plan—taking no more than 45 days from the date of receipt to complete its review. The Secretary may disapprove an Action Plan if it is determined that the Plan does not meet the requirements of this Notice.

i. *Certification of proficient controls, processes and procedures.* The Appropriations Act requires that the Secretary certify, in advance of signing a grant agreement, that the grantee has in place proficient financial controls and procurement processes and has established adequate procedures to prevent any duplication of benefits as defined by section 312 of the Stafford Act, ensure timely expenditure of funds, maintain comprehensive Web sites regarding all disaster recovery activities assisted with these funds, and detect and prevent waste, fraud, and abuse of funds.

To enable the Secretary to make the certification, each grantee must submit the items listed below to the grantee's designated HUD representative. The information must be submitted within 30 days of the effective date of this Notice, or with the grantee's submission of its Action Plan, whichever date is earlier. Grant agreements will not be executed until HUD has issued a certification in response to the grantee's submission.

(1) Financial Control Checklist. A grantee has in place proficient financial controls if each of the following criteria are satisfied:

(a) Most recent OMB Circular A–133 audit and annual financial statement indicates that the grantee has no material weaknesses, deficiencies, or concerns that HUD considers to be relevant to the financial management of the CDBG program. If the A–133 or annual financial statement identified weaknesses or deficiencies, the grantee must provide documentation showing how those weaknesses have been removed or are being addressed; and

(b) Completed HUD monitoring checklist for financial standards (Exhibit 3–18 of the Community Planning and Development *Monitoring Handbook* 6509.02) and the grantee's financial standards. The checklist and standards must demonstrate the financial standards are complete and conform with the requirements of Exhibit 3–18. The grantee must identify which sections of its financial standards address each of the questions in the monitoring checklist and which personnel or unit are responsible for each checklist item.

(2) Procurement. A grantee has in place a proficient procurement process if the:

(a) Grantee has adopted the specific procurement standards identified in 24 CFR 85.36. The grantee must provide a copy of its procurement standards and indicate the sections of its procurement standards that incorporate 24 CFR 85.36. The procedures should also indicate which personnel or unit are responsible for each item; or

(b) Grantee's procurement process/standards are equivalent to the procurement standards at 24 CFR 85.36 (applicable to State grantees only). Grantee must provide its procurement standards and indicate the sections of its procurement standards that align with each procurement provision of 24 CFR 85.36. The procedures should also indicate which personnel or unit are responsible for the task.

(3) Duplication of benefits. A grantee has adequate procedures to prevent the duplication of benefits when it provides to HUD a uniform prevention of duplication of benefits procedure wherein the grantee identifies its processes for each of the following: verifying all sources of disaster assistance; determining an applicant's unmet need(s) before awarding assistance; and ensuring beneficiaries agree to repay the assistance if they later receive other disaster assistance for the same purpose. The procedures should also indicate which personnel or unit are responsible for the task. Departmental guidance to assist in preventing a duplication of benefits is provided in a notice published in the **Federal Register** at 76 FR 71060 (November 16, 2011) and in paragraph A.21, section VI, of this Notice.

(4) Adequate procedures to determine timely expenditures. A grantee has adequate procedures to determine timely expenditures if a grantee provides procedures to HUD that indicate how the grantee will track expenditures each month; how it will monitor expenditures of its recipients; how it will reprogram funds in a timely manner for activities that are stalled; and how it will project expenditures. The procedures should also indicate which personnel or unit are responsible for the task.

(5) Procedures to maintain comprehensive Web sites regarding all disaster recovery activities assisted with these funds. A grantee has adequate procedures to maintain comprehensive Web sites regarding all disaster recovery

activities if its procedures indicate that the grantee will have a separate page dedicated to its disaster recovery that will contain links to all action plans, action plan amendments, performance reports, citizen participation requirements, and activity/program information for activities described in the action plan. The procedures should also indicate the frequency of Web site updates and which personnel or unit are responsible for the task.

(6) Procedures to detect fraud, waste, and abuse of funds. A grantee has adequate procedures to detect fraud, waste, and abuse if its procedures indicate how the grantee will verify the accuracy of information provided by applicants; provides a monitoring policy indicating how and why monitoring is conducted, the frequency of monitoring, and which items are monitored; and that the internal auditor has affirmed and described its role in detecting fraud, waste, and abuse.

(7) Grantee certification. As part of its submission, the grantee is required by paragraph E.42.q to attest to the proficiency and adequacy of its controls.

j. *Obligation and expenditure of funds.* Upon the Secretary's certification, HUD will issue a grant agreement obligating the funds to the grantee. Only the funds described by the grantee in its Action Plan, at the necessary level of detail, will be obligated. In addition, HUD will establish the line of credit and the grantee will receive DRGR system access (if it does not have access already). The grantee must also enter its Action Plan activities into the DRGR system before it may draw funds as described in paragraph A.2, below.

Each activity must meet the applicable environmental requirements. After the Responsible Entity completes an environmental review(s) pursuant to 24 CFR part 58, as applicable (or paragraph A.20, as applicable), and receives from HUD or the State an approved Request for Release of Funds and certification (as applicable), the grantee may draw down funds from the line of credit for the activity. Note that the disbursement of grant funds must begin no later than 60 days after the grantee has received access to its line of credit.

k. *Amending the Action Plan.* As the grantee finalizes its long-term recovery goals, or as needs change through the recovery process, the grantee must amend its Action Plan to update its needs assessment, modify or create new activities, or re-program funds, as necessary. Each amendment must be highlighted, or otherwise identified, within the context of the entire Action Plan. The beginning of every Action Plan amendment must include a section that identifies exactly what content is being added, deleted, or changed. This section must also include a chart or table that clearly illustrates where funds are coming from and where they are moving to. The Action Plan must include a revised budget allocation table that reflects the entirety of all funds, as amended. A grantee's most recent version of its entire Action Plan must be accessible for viewing as a single document at any given point in time, rather than the public or HUD having to view and cross-reference changes among multiple amendments.

If a grantee amends its Action Plan to program additional funds that the Department has allocated to it, the grant agreement must also be revised. As stated in paragraph 1.a, the requirement for each grantee to expend funds within two years of the date of obligation will be enforced relative to the activities funded under each obligation, as applicable.

l. *Projection of expenditures and outcomes.* Each grantee must amend its published Action Plan to project expenditures and outcomes within 90 days of the Action Plan approval. The projections must be based on each quarter's expected performance—beginning the quarter funds are available to the grantee and continuing each quarter until all funds are expended. The published Action Plan must be amended to reflect any subsequent changes, updates, or revision of the projections. Amending the Action Plan to accommodate these changes is not considered a substantial amendment. Guidance on the preparation of projections is available on HUD's Web site. The projections will enable HUD, the public, and the grantee, to track proposed versus actual performance.

2. *HUD performance review authorities and grantee reporting requirements in the Disaster Recovery Grant Reporting (DRGR) System.*

a. *Performance review authorities.* 42 U.S.C. 5304(e) requires that the Secretary shall, at least on an annual basis, make such reviews and audits as may be necessary or appropriate to determine whether the grantee has carried out its activities in a timely manner, whether the grantee's activities and certifications are carried out in accordance with the requirements and the primary objectives of the HCD Act and other applicable laws, and whether the grantee has the continuing capacity to carry out those activities in a timely manner. Grantees are advised that HUD is increasing its monitoring and technical assistance effort to coincide with the two-year expenditure deadline.

This Notice waives the requirements for submission of a performance report pursuant to 42 U.S.C. 12708 and 24 CFR 91.520. In the alternative, and to ensure consistency between grants allocated under the Appropriations Act and prior CDBG–DR appropriation laws, HUD is requiring that grantees enter information in the DRGR system in sufficient detail to permit the Department's review of grantee performance on a quarterly basis and to enable remote review of grantee data to allow HUD to assess compliance and risk.

b. *DRGR Action Plan.* Each grantee must enter its Action Plan for Disaster Recovery, including performance measures, into HUD's DRGR system. As more detailed information about uses of funds is identified by the grantee, it must be entered into the DRGR system at a level of detail that is sufficient to serve as the basis for acceptable performance reports, and permits HUD review of compliance requirements.

The Action Plan must also be entered into the DRGR system so that the grantee is able to draw its CDBG–DR funds. The grantee may enter activities into DRGR before or after submission of the Action Plan to HUD. To enter an activity into the DRGR system, the grantee must know the activity type, national objective, and the organization that will be responsible for the activity. In addition, a Data Universal Numbering System (DUNS) number must be entered into the system for any entity carrying out a CDBG–DR funded activity, including the grantee, recipient(s) and subrecipient(s), contractor(s), and developers. To comply with the statutory requirements regarding identification of contractors, and to provide a mechanism for tracking large contracts in DRGR, HUD is requiring grantees to identify in the DRGR system any contract over $25,000.

Each activity entered into the DRGR system must also be categorized under a ''project''. Typically, projects are based on groups of activities that accomplish a similar, broad purpose (*e.g.,* Housing, Infrastructure, or Economic Development) or are based on an area of service (*e.g.,* Community A). If a grantee submits a partial Action Plan or amendment to describe just one program (*e.g.,* Single Family Rehabilitation), that program is entered as a project in DRGR. Further, the budget of the program would be identified as the project's budget. If a State grantee has only identified the Method of Distribution (MOD) upon HUD's approval of the published Action Plan, the MOD itself typically serves as

the projects in the DRGR system, rather than the activities. As funds are distributed to subgrantees and subrecipients, who decide which specific activities to fund, those activity fields are then populated.

c. *Tracking oversight activities in the DRGR system; use of DRGR data for HUD review and dissemination.* Each grantee must also enter into DRGR summary information on monitoring visits and reports, audits, and technical assistance it conducts as part of its oversight of its disaster recovery programs. The grantee's Quarterly Performance Report (QPR) will include a summary indicating the number of grantee oversight visits and reports (see subparagraph e for more information on the QPR). HUD will use data entered into the DRGR Action Plan and the QPR, transactional data from the DRGR system, and other information provided by the grantee to provide reports to Congress and the public, as well as to (1) Monitor for anomalies or performance problems that suggest fraud, abuse of funds, and duplication of benefits; (2) reconcile budgets, obligations, funding draws, and expenditures; (3) calculate expenditures to determine compliance with administrative and public service caps and the overall percentage of funds that benefit low- and moderate-income persons; and (4) analyze the risk of grantee programs to determine priorities for the Department's monitoring.

d. *Tracking program income in the DRGR system.* Grantees must use the DRGR system to draw grant funds for each activity. Grantees must also use the DRGR system to track program income receipts, disbursements, and revolving loan funds. If a grantee permits local governments or subrecipients to retain program income, the grantee must establish program income accounts in the DRGR system. The DRGR system requires grantees to use program income before drawing additional grant funds, and ensures that program income retained by one organization will not affect grant draw requests for other organizations.

e. *DRGR System Quarterly Performance Report (QPR).* Each grantee must submit a QPR through the DRGR system no later than 30 days following the end of each calendar quarter. Within 3 days of submission to HUD, each QPR must be posted on the grantee's official Web site. The grantee's first QPR is due after the first full calendar quarter after the grant award. For example, a grant award made in April requires a QPR to be submitted by October 30. QPRs must be submitted on a quarterly basis until all funds have been expended and all expenditures have been reported.

Each QPR will include information about the uses of funds in activities identified in the DRGR system Action Plan during the applicable quarter. This includes, but is not limited to, the: project name, activity, location, and national objective; funds budgeted, obligated, drawn down, and expended; the funding source and total amount of any non-CDBG–DR funds to be expended on each activity; beginning and actual completion dates of completed activities; achieved performance outcomes such as number of housing units complete or number of low- and moderate-income persons benefiting; and the race and ethnicity of persons assisted under direct-benefit activities. Grantees must also record the amount of funding expended for each contractor identified in the Action Plan. The DRGR system will automatically display the amount of program income receipted, the amount of program income reported as disbursed, and the amount of grant funds disbursed. Grantees must include a description of actions taken in that quarter to affirmatively further fair housing within the section titled ''Overall Progress Narrative'' in the DRGR system.

3. *Citizen participation waiver and alternative requirement.* To permit a more streamlined process, and ensure disaster recovery grants are awarded in a timely manner, provisions of 42 U.S.C. 5304(a)(2) and (3), 42 U.S.C. 12707, 24 CFR 570.486, 91.105(b) and (c), and 91.115(b) and (c), with respect to citizen participation requirements, are waived and replaced by the requirements below. The streamlined requirements do not mandate public hearings at a state, entitlement, or local government level, but do require providing a reasonable opportunity (at least 7 days) for citizen comment and ongoing citizen access to information about the use of grant funds. The streamlined citizen participation requirements for a grant carried out under this Notice are:

a. *Publication of the Action Plan, opportunity for public comment, and substantial amendment criteria.* Before the grantee adopts the Action Plan for this grant or any substantial amendment to this grant, the grantee will publish the proposed plan or amendment (including the information required in this Notice for an Action Plan for Disaster Recovery). The manner of publication must include prominent posting on the grantee's official Web site and must afford citizens, affected local governments, and other interested parties a reasonable opportunity to examine the plan or amendment's contents. The topic of disaster recovery must be navigable by citizens from the grantee (or relevant agency) homepage. Grantees are also encouraged to notify affected citizens through electronic mailings, press releases, statements by public officials, media advertisements, public service announcements, and/or contacts with neighborhood organizations.

Despite the expedited process, grantees are still responsible for ensuring that all citizens have equal access to information about the programs, including persons with disabilities and limited English proficiency (LEP). Each grantee must ensure that program information is available in the appropriate languages for the geographic area served by the jurisdiction. For assistance in ensuring that this information is available to LEP populations, recipients should consult the *Final Guidance to Federal Financial Assistance Recipients Regarding Title VI, Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons* published on January 22, 2007, in the **Federal Register** (72 FR 2732).

Subsequent to publication of the Action Plan, the grantee must provide a reasonable time frame and method(s) (including electronic submission) for receiving comments on the plan or substantial amendment. In its Action Plan, each grantee must specify criteria for determining what changes in the grantee's plan constitute a substantial amendment to the plan. At a minimum, the following modifications will constitute a substantial amendment: a change in program benefit or eligibility criteria; the allocation or re-allocation of more than $1 million; or the addition or deletion of an activity. The grantee may substantially amend the Action Plan if it follows the same procedures required in this Notice for the preparation and submission of an Action Plan for Disaster Recovery. Prior to submission of a substantial amendment, the grantee is encouraged to work with its HUD representative to ensure the proposed change is consistent with this Notice, and all applicable regulations and Federal law.

b. *Non-substantial amendment.* The grantee must notify HUD, but is not required to undertake public comment, when it makes any plan amendment that is not substantial. HUD must be notified at least five days before the amendment becomes effective. However, every amendment to the Action Plan (substantial and non-substantial) must be numbered sequentially and posted on the grantee's Web site. The Department will

acknowledge receipt of the notification of non-substantial amendments via email within 5 business days.

c. *Consideration of public comments.* The grantee must consider all comments, received orally or in writing, on the Action Plan or any substantial amendment. A summary of these comments or views, and the grantee's response(s), must be submitted to HUD with the Action Plan or substantial amendment.

d. *Availability and accessibility of the Action Plan.* The grantee must make the Action Plan, any amendments, and all performance reports available to the public on its Web site and on request. In addition, the grantee must make these documents available in a form accessible to persons with disabilities and non-English-speaking persons. During the term of the grant, the grantee will provide citizens, affected local governments, and other interested parties with reasonable and timely access to information and records relating to the Action Plan and to the grantee's use of grant funds.

e. *Citizen complaints.* The grantee will provide a timely written response to every citizen complaint. The response will be provided within 15 working days of the receipt of the complaint, if practicable.

4. *Direct grant administration and means of carrying out eligible activities.*

a. *Requirements applicable to State grantees.* Requirements at 42 U.S.C. 5306 are waived, to the extent necessary, to allow a State to directly carry out CDBG–DR activities eligible under this Notice, rather than distribute all funds to UGLGs. Experience in administering CDBG supplemental disaster recovery funding demonstrates that this practice can expedite recovery. Pursuant to this waiver, the standard at section 570.480(c) and the provisions at 42 U.S.C. 5304(e)(2) will also include activities that the State carries out directly. In addition, activities eligible under this Notice may be carried out, subject to State law, by the State through its employees, through procurement contracts, or through assistance provided under agreements with subrecipients or recipients. Notwithstanding this waiver, State grantees continue to be responsible for civil rights, labor standards, and environmental protection requirements contained in the HCD Act and 24 CFR part 570, as well as ensuring such compliance by subgrantees.

b. *Requirements for all grantees—direct administration and assistance to neighborhood organizations described in 42 U.S.C. 5305(a)(15) of the HCD Act.* Activities made eligible at 42 U.S.C. 5305(a)(15) may only be undertaken by the eligible entities described in that section, whether the assistance is provided to such an entity from the State or from a UGLG.

c. *Use of Funds for Structures Owned by Religious Organizations.* The provision of assistance for buildings used for religious purposes is governed by 24 CFR 570.200(j). Although CDBG funds cannot be used for structures dedicated solely to religious use, such as a religious congregation's principal place of worship, grantees may in certain circumstances pay some rehabilitation or new construction costs for structures used for religious and secular purposes.

Funding for rehabilitating or reconstructing storm-damaged or destroyed buildings may be appropriate where a facility is not used exclusively for the benefit of the religious congregation, such as a building used as a homeless shelter, food pantry, adult literacy center, or child care center. Where a structure is used for both religious and secular uses, CDBG–DR funds may pay the portion of eligible rehabilitation or construction costs attributable to the non-religious use. For example, for a building that is used 50 percent of the time for, or has 50 percent of the square footage dedicated to, homeless services, CDBG–DR funds may pay 50 percent of the rehabilitation or construction cost. Grantees are encouraged to work closely with their CPD Representative to ensure compliance with the requirements of 24 CFR 570.200(j) or to obtain further guidance on the applicability of this rule to specific programs or properties.

5. *Consolidated Plan waiver.* HUD is waiving the requirement for consistency with the consolidated plan (requirements at 42 U.S.C. 12706, 24 CFR 91.325(a)(5), 91.225(a)(5), 91.325(b)(3), and 91.225(b)(3)), because the effects of a major disaster alter a grantee's priorities for meeting housing, employment, and infrastructure needs. In conjunction, 42 U.S.C. 5304(e), to the extent that it would require HUD to annually review grantee performance under the consistency criteria, is also waived. However, this waiver applies only until the grantee first updates its full consolidated plan. HUD expects grantees to update its full consolidated plan to reflect disaster-related needs no later than its Fiscal Year 2015 consolidated plan update. At a minimum, the updated consolidated plan must include the criteria discussed in this Notice. While grantees are encouraged to incorporate disaster recovery needs into their consolidated plan updates as soon as practicable, any unmet disaster-related needs and associated priorities must be incorporated into the grantee's next consolidated plan update by Fiscal Year 2015. If not completed already, the grantee must update its Analysis of Impediments to Fair Housing Choice in coordination with its post-waiver consolidated plan update, so that it more accurately reflects housing conditions following the disaster.

6. *Requirement for consultation during plan preparation.* Currently, the statute and regulations require States to consult with affected units of local government in non-entitlement areas of the State in determining the State's proposed method of distribution. HUD is waiving 42 U.S.C. 5306(d)(2)(C)(iv), 42 U.S.C. 5306(d)(2)(D), 24 CFR 91.325(b), and 91.110, with the alternative requirement that any State receiving an allocation under this Notice consult with all disaster-affected UGLGs (including any CDBG-entitlement communities, and local public housing authorities in affected areas) in determining the use of funds. This ensures State grantees sufficiently assess the recovery needs of all areas affected by the disaster.

For New York City, HUD is supplementing 24 CFR 91.100 with the additional requirement that the jurisdiction must consult with adjacent UGLGs, including local government agencies with metropolitan-wide planning responsibilities (particularly for problems and solutions that go beyond a single jurisdiction), and local public housing authorities (affected by the disaster).

Last, all grantees must consult with States, tribes, UGLGs, and other stakeholders and affected parties in the surrounding geographic area to ensure consistency with applicable regional redevelopment plans.

7. *Overall benefit waiver and alternative requirement.* The primary objective of the HCD Act is the ''development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income.'' 42 U.S.C. 5301(c). To carry out this objective, the statute requires that 70 percent of the aggregate of a regular CDBG program's funds be used to support activities benefitting low- and moderate-income persons. This target could be difficult to reach, and perhaps even impossible, for many grantees affected by Hurricane Sandy. Grantees under this Notice experienced disaster impacts that affected entire communities—regardless of income, and the existing requirement

may prevent grantees from providing assistance to damaged areas of need. Therefore, this Notice waives the requirements at 42 U.S.C. 5301(c), 42 U.S.C. 5304(b)(3)(A), 24 CFR 570.484, and 570.200(a)(3), that 70 percent of funds be used for activities that benefit low- and moderate-income persons. Instead, 50 percent of funds must benefit low- and moderate-income persons. This provides grantees with greater flexibility to carry out recovery activities by allowing up to 50 percent of the grant to assist activities under the urgent need or prevention or elimination of slums or blight national objectives.

Grantees may seek to reduce the overall benefit requirement below 50 percent of the total grant, but must submit a justification that, at a minimum: (a) Identifies the planned activities that meet the needs of its low- and moderate-income population; (b) describes proposed activity(ies) and/or program(s) that will be affected by the alternative requirement, including their proposed location(s) and role(s) in the grantee's long-term disaster recovery plan; (c) describes how the activities/programs identified in (b) prevent the grantee from meeting the 50 percent requirement; and (d) demonstrates that the needs of non-low and moderate-income persons or areas are disproportionately greater, and that the jurisdiction lacks other resources to serve them. Upon request, a sample justification can be provided by the Department. Note that the 50 percent overall benefit requirement will not be reduced unless the Secretary specifically finds that there is a compelling need to further reduce the threshold.

8. *Use of the ''upper quartile'' or ''exception criteria'' for low- and moderate-income area benefit activities.* This exception applies to entitlement communities that have few, if any, areas within their jurisdiction that have 51 percent or more low- and moderate-income residents. per the requirements at 42 U.S.C. 5305(c)(2)(A), these communities are allowed to use a percentage less than 51 percent to qualify activities under the low- and moderate-income area benefit category. This exception is referred to as the ''exception criteria'' or the ''upper quartile''.

HUD assesses Census block groups to determine whether an entitlement community meets the exception criteria. For communities that qualify, the Department identifies the alternative percentage (i.e., the lowest proportion) the community may use, instead of 51 percent, for the purpose of qualifying activities under the low- and moderate-income area benefit. HUD advises the entitlement community accordingly. Periodically, HUD updates the low- and moderate-income summary data used to identify the exception criteria; disaster recovery grantees are required to use the most recent data available in implementing the exception criteria. Note that for entitlement communities that meet the exception criteria, the community may apply the criteria if it receives funds from a State grantee.

9. *Use of ''uncapped'' income limits.* The Quality Housing and Work Responsibility Act of 1998 (Title V of Pub. L. 105–276) enacted a provision that directed the Department to grant exceptions to at least 10 jurisdictions that are currently ''capped' under HUD's low and moderate-income limits. Under this exception, a number of CDBG entitlement grantees may use ''uncapped'' income limits that reflect 80 percent of the actual median income for the area. Each year, HUD publishes guidance on its Web site identifying which grantees may use uncapped limits. The uncapped limits apply to disaster recovery activities funded pursuant to this Notice in jurisdictions covered by the uncapped limits, including jurisdictions that receive disaster recovery funds from the State.

10. *Grant administration responsibilities and general administration cap.*

a. *Grantee responsibilities.* per the Appropriations Act, each grantee shall administer its award directly, in compliance with all applicable laws and regulations. Each grantee shall be financially accountable for the use of all funds provided in this Notice and may contract for administrative support but grantees may not delegate or contract to any other party any inherently governmental responsibilities related to management of the funds, such as oversight, policy development, and financial management.

b. *General administration cap.* For grants under this Notice, the annual CDBG program administration requirements must be modified to be consistent with the Appropriations Act, which allows up to 5 percent of the grant to be used for general administration costs, by the grantee, by UGLGs, or by subrecipients. Thus, the total of all costs charged to the grant and classified as general administration must be less than or equal to the 5 percent cap.

(1) For State grantees under this Notice, the provisions of 42 U.S.C. 5306(d) and 24 CFR 570.489(a)(1)(i), (ii), and (iii) will not apply to the extent that they cap general administration and technical assistance expenditures, limit a State's ability to charge a nominal application fee for grant applications for activities the State carries out directly, and require a dollar-for-dollar match of State funds for administrative costs exceeding $100,000. 42 U.S.C. 5306(d)(5) and (6) are waived and replaced with the alternative requirement that the aggregate total for general administrative and technical assistance expenditures must not exceed 5 percent. States remain limited to spending a maximum of 20 percent of their total grant amount on a combination of planning and general administration costs. Planning costs subject to the 20 percent cap are those defined in 42 U.S.C. 5305(a)(12).

(2) New York City is also subject to the 5 percent administrative cap. This 5 percent applies to all general administration costs—whether incurred by the grantee or its subrecipients. The City also remains limited to spending 20 percent of its total allocation on a combination of planning and general administration costs.

11. *Planning-only activities—applicable to State grantees only.* The annual State CDBG program requires that local government grant recipients for planning-only grants must document that the use of funds meets a national objective. In the State CDBG program, these planning grants are typically used for individual project plans. By contrast, planning activities carried out by entitlement communities are more likely to include non-project specific plans such as functional land-use plans, master plans, historic preservation plans, comprehensive plans, community recovery plans, development of housing codes, zoning ordinances, and neighborhood plans. These plans may guide long-term community development efforts comprising multiple activities funded by multiple sources. In the entitlement program, these general planning activities are presumed to meet a national objective under the requirements at 24 CFR 570.208(d)(4).

The Department notes that effective CDBG disaster recoveries have relied on some form of area-wide or comprehensive planning activity to guide overall redevelopment independent of the ultimate source of implementation funds. Therefore, for State grantees receiving an award under this Notice, the Department is removing the eligibility requirements at 24 CFR 570.483(b)(5) or (c)(3). Instead, States must comply with 570.208(d)(4) when funding disaster recovery-assisted planning-only grants, or directly administering planning activities that

guide recovery in accordance with the Appropriations Act. In addition, the types of planning activities that States may fund or administer are expanded to be consistent with those of entitlement communities identified at 24 CFR 570.205.

12. *Waiver and alternative requirement for distribution to CDBG metropolitan cities and urban counties—applicable to State grantees only.* Section 5302(a)(7) of title 42, U.S.C. (definition of ''nonentitlement area'') and provisions of 24 CFR part 570 that would prohibit or restrict a State from distributing CDBG funds to entitlement communities and Indian tribes under the CDBG program, are waived, including 24 CFR 570.480(a) and 570.486(c) (revised April 23, 2012). Instead, the State may distribute funds to UGLGs and Indian tribes.

13. *Use of subrecipients—applicable to State grantees only.* The State CDBG program rule does not make specific provision for the treatment of entities that the CDBG Entitlement program calls ''subrecipients.'' The waiver allowing the State to directly carry out activities creates a situation in which the State may use subrecipients to carry out activities in a manner similar to an entitlement community. Therefore, for States taking advantage of the waiver to carry out activities directly, the requirements at 24 CFR 570.502, 570.503, and 570.500(c) apply, except the requirements that specific references to 24 CFR parts 84 and 85 must be included in subrecipient agreements. Pursuant to 24 CFR 570.489(n) (revised April 23, 2012) and 570.502, State grantees must ensure that its costs and those of its state recipients and subrecipients are in conformance with 2 CFR part 225 (OMB Circular A–87), whether carrying out activities directly or through the use of a subrecipient.

14. *Recordkeeping.*

a. *State grantees.* When a State carries out activities directly, 24 CFR 570.490(b) is waived and the following alternative provision shall apply: the State shall establish and maintain such records as may be necessary to facilitate review and audit by HUD of the State's administration of CDBG–DR funds under 24 CFR 570.493. Consistent with applicable statutes, regulations, waivers and alternative requirements, and other Federal requirements, the content of records maintained by the State shall be sufficient to: enable HUD to make the applicable determinations described at 24 CFR 570.493; make compliance determinations for activities carried out directly by the State; and show how activities funded are consistent with the descriptions of activities proposed for funding in the Action Plan and/or DRGR system. For fair housing and equal opportunity purposes, and as applicable, such records shall include data on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the program.

b. *UGLGs grantees.* New York City remains subject to the recordkeeping requirements of 24 CFR 570.506.

15. *Change of use of real property—applicable to State grantees only.* This waiver conforms to the change of use of real property rule to the waiver allowing a State to carry out activities directly. For purposes of this program, all references to ''unit of general local government'' in 24 CFR 570.489(j), shall be read as ''unit of general local government or State.''

16. *Responsibility for review and handling of noncompliance —applicable to State grantees only.* This change is in conformance with the waiver allowing the State to carry out activities directly. 24 CFR 570.492 is waived and the following alternative requirement applies for any State receiving a direct award under this Notice: the State shall make reviews and audits, including onsite reviews of any subrecipients, designated public agencies, and UGLGs, as may be necessary or appropriate to meet the requirements of 42 U.S.C. 5304(e)(2), as amended, and as modified by this Notice. In the case of noncompliance with these requirements, the State shall take such actions as may be appropriate to prevent a continuance of the deficiency, mitigate any adverse effects or consequences, and prevent a recurrence. The State shall establish remedies for noncompliance by any designated subrecipients, public agencies, or UGLGs.

17. *Program income alternative requirement.* The Department is waiving applicable program income rules at 42 U.S.C 5304(j), 24 CFR 570.500(a) and (b), 570.504, and 570.489(e) to the extent necessary to provide additional flexibility as described under this Notice. The alternative requirements provide guidance regarding the use of program income received before and after grant closeout and address revolving loan funds.

a. *Definition of program income.*

(1) For the purposes of this subpart, ''program income'' is defined as gross income generated from the use of CDBG–DR funds, except as provided in subparagraph D of this paragraph, and received by a State, UGLG, or tribe, or a subrecipient of a State, UGLG, or tribe. When income is generated by an activity that is only partially assisted with CDBG–DR funds, the income shall be prorated to reflect the percentage of CDBG–DR funds used (*e.g.,* a single loan supported by CDBG–DR funds and other funds; a single parcel of land purchased with CDBG–DR funds and other funds). Program income includes, but is not limited to, the following:

(a) Proceeds from the disposition by sale or long-term lease of real property purchased or improved with CDBG–DR funds;

(b) Proceeds from the disposition of equipment purchased with CDBG–DR funds;

(c) Gross income from the use or rental of real or personal property acquired by a State, UGLG, or tribe or subrecipient of a State, UGLG, or tribe with CDBG–DR funds, less costs incidental to generation of the income (i.e., net income);

(d) Net income from the use or rental of real property owned by a State, UGLG, or tribe or subrecipient of a State, UGLG, or tribe, that was constructed or improved with CDBG–DR funds;

(e) Payments of principal and interest on loans made using CDBG–DR funds;

(f) Proceeds from the sale of loans made with CDBG–DR funds;

(g) Proceeds from the sale of obligations secured by loans made with CDBG–DR funds;

(h) Interest earned on program income pending disposition of the income, but excluding interest earned on funds held in a revolving fund account;

(i) Funds collected through special assessments made against properties owned and occupied by households not of low- and moderate-income, where the special assessments are used to recover all or part of the CDBG–DR portion of a public improvement; and

(j) Gross income paid to a State, UGLG, tribe, or paid to a subrecipient thereof from the ownership interest in a for-profit entity in which the income is in return for the provision of CDBG–DR assistance.

(2) ''Program income'' does not include the following:

(a) The total amount of funds which is less than $25,000 received in a single year and retained by a State, UGLG, tribe, or retained by a subrecipient thereof;

(b) Amounts generated by activities both eligible and carried out by an entity under the authority of section 105(a)(15) of the HCD Act;

b. *Retention of program income.* Per 24 CFR 570.504(c), a UGLG receiving a direct award under this Notice may permit a subrecipient to retain program income. State grantees may permit a UGLG or tribe, which receives or will

receive program income, to retain the program income, but are not required to do so.

c. *Program income—use, closeout, and transfer.*

(1) Program income received (and retained, if applicable) before or after closeout of the grant that generated the program income, and used to continue disaster recovery activities, is treated as additional disaster recovery CDBG funds subject to the requirements of this Notice and must be used in accordance with the grantee's Action Plan for Disaster Recovery. To the maximum extent feasible, program income shall be used or distributed before additional withdrawals from the U.S. Treasury are made, except as provided in subparagraph d of this paragraph.

(2) In addition to the regulations dealing with program income found at 24 CFR 570.489(e) and 570.504, the following rules apply: A grantee may transfer program income before closeout of the grant that generated the program income to its annual CDBG program. In addition, a State grantee may transfer program income before closeout to any annual CDBG-funded activities carried out by a UGLG or Indian tribe within the State. Program income received by a grantee, or received and retained by a subgrantee, after closeout of the grant that generated the program income, may also be transferred to a grantee's annual CDBG award. In all cases, any program income received, and *not* used to continue disaster recovery activities, will *not* be subject to the waivers and alternative requirements of this Notice. Rather, those funds will be subject to the grantee's regular CDBG program rules.

d. *Revolving loan funds.* New York City, State grantees, and UGLGs or tribes (as permitted by a State grantee) may establish revolving funds to carry out specific, identified activities. A revolving fund, for this purpose, is a separate fund (with a set of accounts that are independent of other program accounts) established to carry out specific activities. These activities generate payments, which will be used to support similar activities going forward. These payments to the revolving fund are program income and must be substantially disbursed from the revolving fund before additional grant funds are drawn from the U.S. Treasury for payments which could be funded from the revolving fund. Such program income is not required to be disbursed for non-revolving fund activities.

State grantees may also establish a revolving fund to distribute funds to UGLGs or tribes to carry out specific, identified activities. The same requirements, outlined above, apply to this type of revolving loan fund. Last, note that no revolving fund, established per this Notice, shall be directly funded or capitalized with an advance of CDBG–DR grant funds.

18. *Reimbursement of disaster recovery expenses.* The provisions of 24 CFR 570.489(b) are applied to permit a State to reimburse itself for otherwise allowable costs incurred by itself or its recipients subgrantees or subrecipients (including public housing authorities) on or after the incident date of the covered disaster. New York City is subject to the provisions of 24 CFR 570.200(h) but may reimburse itself or its subrecipients for otherwise allowable costs incurred on or after the incident date of the covered disaster. 24 CFR 570.200(h)(1)(i) will not apply to the extent that it requires pre-agreement activities to be included in a consolidated plan. The Department expects both State grantees and New York City to include all pre-agreement activities in their Action Plans. The provisions at 24 CFR 570.200(h) and 570.489(b) apply to grantees reimbursing costs incurred by itself or its recipients or subrecipients prior to the execution of a grant agreement with HUD.

19. *One-for-One Replacement, Relocation, and Real Property Acquisition Requirements.* Activities and projects assisted by CDBG–DR are subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 U.S.C. 4601 *et seq.*)(''URA'') and Section 104(d) of the HCD Act (42 U.S.C. 5304(d))(''Section 104(d)''). The implementing regulations for the URA are at 49 CFR part 24. The regulations for Section 104(d) are at 24 CFR part 42, subpart C. For the purposes of promoting the availability of decent, safe, and sanitary housing and expediting disaster recovery and rehousing efforts, HUD is waiving the following URA and Section 104(d) requirements for grantees under this Notice:

a. *One-for-one replacement.* One-for-one replacement requirements at section 104(d)(2)(A)(i)–(ii) and (d)(3) and 24 CFR 42.375 are waived in connection with funds allocated under this Notice for lower-income dwelling units that are damaged by the disaster and not suitable for rehabilitation. The Section 104(d) one-for-one replacement requirements generally apply to demolished or converted occupied and vacant occupiable lower-income dwelling units. This waiver exempts disaster-damaged units that meet the grantee's definition of ''not suitable for rehabilitation'' from the one-for-one replacement requirements. Before carrying out a program or activity which may be subject to the one-for-one replacement requirements, the grantee must define ''not suitable for rehabilitation'' in its Action Plan or in policies/procedures governing these programs and activities. Grantees with questions about the one-for-one replacement requirements are encouraged to contact the HUD Regional Relocation Specialist responsible for their state.

HUD is waiving the one-for-one replacement requirements because they do not account for the large, sudden changes that a major disaster may cause to the local housing stock, population, or economy. Furthermore, the requirements may discourage grantees from converting or demolishing disaster-damaged housing when excessive costs would result from replacing all such units. Disaster-damaged housing structures that are not suitable for rehabilitation can pose a threat to public health and safety and may impede economic revitalization. Grantees should re-assess post-disaster population and housing needs to determine the appropriate type, amount, and location of lower-income dwelling units to rehabilitate and/or rebuild. Grantees should note, however, that the demolition and/or disposition of Public Housing Authority-owned public housing units is covered by section 18 of the United States Housing Act of 1937, as amended, and 24 CFR part 970, neither of which is waived by this Notice.

b. *Relocation assistance.* The Section 104(d) relocation assistance requirements at section 104(d)(2)(A) and 24 CFR 42.350 are waived to the extent that they differ from the requirements of the URA and implementing regulations at 49 CFR part 24, as modified by this Notice, for activities related to disaster recovery. Without this waiver, disparities exist in relocation assistance associated with activities typically funded by HUD and FEMA (*e.g.,* buyouts and relocation). Both FEMA and HUD funds are subject to the URA; however, HUD's CDBG funds are also subject to Section 104(d), while FEMA funds are not. The URA provides that a displaced person is eligible to receive a rental assistance payment that covers a period of 42 months. By contrast, Section 104(d) allows a lower-income displaced person to choose between the URA rental assistance payment and a rental assistance payment calculated over a period of 60 months. This waiver of the Section 104(d) requirements

assures uniform and equitable treatment by setting the URA and its implementing regulations as the sole standard for relocation assistance under this Notice.

c. *Arm's length voluntary purchase.* The requirements at 49 CFR 24.101(b)(2)(i)–(ii) are waived to the extent that they apply to an arm's length voluntary purchase carried out by a person who uses funds allocated under this Notice and does not have the power of eminent domain, in connection with the purchase and occupancy of a principal residence by that person. Given the often large-scale acquisition needs of grantees, this waiver is necessary to reduce burdensome administrative requirements following a disaster. Grantees are reminded that any tenants occupying real property that is acquired through voluntary purchase may be eligible for relocation assistance.

d. *Rental assistance to a displaced person.* The requirements at sections 204(a) and 206 of the URA, and 49 CFR 24.2(a)(6)(viii), 24.402(b)(2), and 24.404 are waived to the extent that they require the grantee to use 30 percent of a low-income displaced person's household income in computing a rental assistance payment if the person had been paying more than 30 percent of household income in rent/utilities without ''demonstrable hardship'' before the project. Thus, if a tenant has been paying rent/utilities in excess of 30 percent of household income without demonstrable hardship, using 30 percent of household income to calculate the rental assistance payment would not be required. Before carrying out a program or activity in which the grantee will provide rental assistance payments to displaced persons, the grantee must define ''demonstrable hardship'' in its Action Plan or in the policies and procedures governing these programs and activities. The grantee's definition of demonstrable hardship applies when implementing these alternative requirements.

e. *Tenant-based rental assistance.* The requirements of sections 204 and 205 of the URA, and 49 CFR 24.2(a)(6)(ix) and 24.402(b) are waived to the extent necessary to permit a grantee to meet all or a portion of a grantee's replacement housing financial assistance obligation to a displaced tenant by offering rental housing through a tenant-based rental assistance (TBRA) housing program subsidy (*e.g.,* Section 8 Housing Choice Voucher Program), provided that the tenant is provided referrals to comparable replacement dwellings in accordance with 49 CFR 24.204(a) where the owner is willing to participate in the TBRA program, and the period of authorized assistance is at least 42 months. Failure to grant this waiver would impede disaster recovery whenever TBRA program subsidies are available but funds for cash relocation assistance are limited. This waiver gives grantees an additional relocation resource option.

f. *Moving expenses.* The requirements at section 202(b) of the URA and 49 CFR 24.302, which require that a grantee offer a displaced person the option to receive a fixed moving cost payment based on the Federal Highway Administration's Fixed Residential Moving Cost Schedule instead of receiving payment for actual moving and related expenses, are waived. As an alternative, the grantee must establish and offer the person a ''moving expense and dislocation allowance'' under a schedule of allowances that is reasonable for the jurisdiction and that takes into account the number of rooms in the displacement dwelling, whether the person owns and must move the furniture, and, at a minimum, the kinds of expenses described in 49 CFR 24.301. Without this waiver and alternative requirement, disaster recovery may be impeded by requiring grantees to offer allowances that do not reflect current local labor and transportation costs. Persons displaced from a dwelling remain entitled to choose a payment for actual reasonable moving and related expenses if they find that approach preferable to the locally established ''moving expense and dislocation allowance.''

g. *Optional relocation policies.* The regulation at 24 CFR 570.606(d) is waived to the extent that it requires optional relocation policies to be established at the grantee or state recipient level. Unlike the regular CDBG program, States receiving CDBG–DR funds may carry out disaster recovery activities directly or through subrecipients. The regulation at 24 CFR 570.606(d) governing optional relocation policies does not account for this distinction. This waiver also makes clear that UGLGs receiving CDBG disaster funds may establish separate optional relocation policies. This waiver is intended to provide States and UGLGs with maximum flexibility in developing optional relocation policies with CDBG–DR funds.

20. *Environmental requirements.*

a. *Clarifying note on the process for environmental release of funds when a State carries out activities directly.* In the regular CDBG program, a State distributes CDBG funds to UGLGs and takes on HUD's role in receiving environmental certifications from the grant recipients and approving releases of funds. For State grantees under this Notice, HUD allows the State to carry out activities directly, in addition to distributing funds to subrecipients and/or subgrantees. Thus, per 24 CFR 58.4, when a State carries out activities directly, the State must submit the certification and request for release of funds to HUD for approval.

b. *Adoption of another agency's environmental review.* In accordance with the Appropriations Act, recipients of Federal funds that use such funds to supplement Federal assistance provided under sections 402, 403, 404, 406, 407, or 502 of the Stafford Act may adopt, without review or public comment, any environmental review, approval, or permit performed by a Federal agency, and such adoption shall satisfy the responsibilities of the recipient with respect to such environmental review, approval, or permit that is required by the HCD Act. The grantee must notify HUD in writing of its decision to adopt another agency's environmental review. The grantee must retain a copy of the review in the grantee's environmental records.

c. *Release of funds.* In accordance with the Appropriations Act, and notwithstanding 42 U.S.C. 5304(g)(2), the Secretary may, upon receipt of a request for release of funds and certification, immediately approve the release of funds for an activity or project assisted with allocations under this Notice if the recipient has adopted an environmental review, approval or permit under subparagraph b, above, or the activity or project is categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

d. *Historic preservation reviews.* To facilitate expedited historic preservation reviews under Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470f), HUD strongly encourages grantees to allocate general administration funds to support the capacity of the State Historic Preservation Officer (SHPO)/Tribal Historic Preservation Officer (THPO) to review CDBG–DR projects.

21. *Duplication of benefits.* Section 312 of the Stafford Act, as amended, generally prohibits any person, business concern, or other entity from receiving financial assistance with respect to any part of a loss resulting from a major disaster as to which he has received financial assistance under any other program or from insurance or any other source. To comply with this law and provisions of the Appropriations Act, each grantee must ensure that each activity provides assistance to a person or entity only to the extent that the

person or entity has a disaster recovery need that has not been fully met.

Given the often complex nature of this issue, the Department has published a separate Notice explaining the duplication of benefit requirements applicable to CDBG–DR grantees; it can be found at 76 FR 71060 (published November 16, 2011). Grantees under this Notice are hereby subject to the November 16, 2011, notice.

22. *Procurement.*

a. *State grantees.* Per 24 CFR 570.489(d), a State must have fiscal and administrative requirements for expending and accounting for all funds. Furthermore, per § 570.489(g), a State shall establish requirements for procurement policies and procedures for UGLGs based on full and open competition. All subgrantees of a State (UGLGs) are subject to the procurement policies and procedures required by the State.

A State may meet the above requirements by electing to follow 24 CFR part 85. If a State has adopted part 85 in full, it must follow the same policies and procedures it uses when procuring property and services with its non-Federal funds. However, the State must ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations per 24 CFR 85.36(a).

If a State has not adopted 85.36(a), but has adopted 85.36(b) through (i), the State and its subgrantees must follow State and local law (as applicable), so long as the procurements conform to applicable Federal law and the standards identified in 85.36(b) through (i).

b. *Direct grants to UGLGs.* New York City will be subject to the procurement requirements of 24 CFR 85.36(b) through (i).

c. *Additional requirements related to procurement.* Congress and HUD may request periodic updates from grantees that employ contractors. A contractor is a third-party firm that the grantee acquires through a formal procurement process to perform specific functions; a subrecipient is not a contractor. Grantees must incorporate performance requirements and penalties into each procured contract or agreement. The Appropriations Act requires HUD to provide grantees with technical assistance on contracting and procurement processes.

23. *Public Web site.* The Appropriations Act requires grantees to maintain a public Web site which provides information accounting for how all grant funds are used, and managed/administered, including details of all contracts and ongoing procurement policies. To meet this requirement, each grantee must enter information on contracts in the DRGR system activity profiles (for all contracts valued over $25,000), and make the following items available on its Web site: the Action Plan (including all amendments); each QPR (as created using the DRGR system) detailing expenditures for each contractor; procurement policies and procedures; executed CDBG–DR contracts; and status of services or goods currently being procured by the grantee—*e.g.,* phase of the procurement, requirements for proposals, etc.

24. *Timely distribution of funds.* The provisions at 24 CFR 570.494 and 24 CFR 570.902 regarding timely distribution of funds are waived and replaced with the alternative requirements under this Notice. Section 904(c) of the Appropriations Act requires that all funds be expended within two years of the date HUD obligates funds to a grantee. Therefore, each grantee must expend all funds within two years of the date its grant agreement with HUD is executed. Note that a grant agreement must be amended when the Department allocates additional funds to the grantee. As stated in paragraph A.1.a, in this section, the requirement for each grantee to expend funds within two years of the date of obligation will be enforced relative to the activities funded under each obligation. HUD expects each grantee to expeditiously obligate and expend all funds, including any recaptured funds or program income, and to carry out activities in a timely manner to ensure this deadline is met. See sections III and VII of this Notice for additional details on expenditure of funds.

To track grantees' progress, HUD will evaluate timeliness in relation to each grantee's established projection schedules (see section III of this Notice, and paragraph A.1.l under section VI). The Department will, absent substantial evidence to the contrary, deem a grantee to be carrying out its programs and activities in a timely manner if the schedule for carrying out its activities is substantially met. In determining the appropriate corrective action pursuant to this section, HUD will take into account the extent to which unexpended funds have been obligated by the grantee and its subrecipients for specific activities at the time the finding is made and other relevant information.

25. *Review of continuing capacity to carry out CDBG-funded activities in a timely manner.* If HUD determines at any time that the grantee has not carried out its CDBG–DR activities and certifications in accordance with the requirements and criteria described in this Notice, HUD will undertake a further review to determine whether or not the grantee has the continuing capacity to carry out its activities in a timely manner. In making the determination, the Department will consider the following alternative requirements to provisions under 42 U.S.C. 5304(e): the nature and extent of the grantee's performance deficiencies, types of corrective actions the grantee has undertaken, and the success or likely success of such actions.

26. *Corrective and remedial actions.* To ensure compliance with the requirements of the Appropriations Act and to effectively administer the CDBG–DR program in a manner that facilitates recovery, particularly the alternative requirements permitting States to act directly to carry out eligible activities, HUD is waiving 42 U.S.C. 5304(e) of the HCD Act to the extent necessary to impose the following alternative requirement: HUD may undertake corrective and remedial actions for States in accordance with the authorities applicable to entitlement grantees in subpart O (including corrective and remedial actions in 24 CFR 570.910, 570.911, and 570.913) or under subpart I of the CDBG regulations at 24 CFR part 570. Before determining appropriate corrective actions, HUD will notify the grantee of the procedures applicable to its review. In accordance with 24 CFR 570.300, the policies and procedures set forth in subpart O will apply to New York City.

27. *Reduction, withdrawal, or adjustment of a grant or other appropriate action.* Prior to a reduction, withdrawal, or adjustment of a grant or other appropriate action taken pursuant to this section, the recipient shall be notified of such proposed action and given an opportunity within a prescribed time period for an informal consultation. Consistent with the procedures described in this Notice, the Secretary may adjust, reduce or withdraw the grant or take other actions as appropriate, except that funds already expended on eligible approved activities shall not be recaptured.

B. Housing and Related Floodplain Issues.

28. *Housing-related eligibility waivers.* The broadening of 42 U.S.C. 5305(a)(24) is necessary following major disasters in which large numbers of affordable housing units have been damaged or destroyed, as is the case of the disasters eligible under this Notice. Thus, 42

U.S.C. 5305(a) is waived to the extent necessary to allow: homeownership assistance for households with up to 120 percent of the area median income, down payment assistance for up to 100 percent of the down payment (42 U.S.C. 5305(a)(24)(D)), and new housing construction. While homeownership assistance may be provided to households with up to 120 percent of the area median income, only those funds used to serve households with up to 80 percent of the area median income may qualify as meeting the low- and moderate-income person benefit national objective.

29. *Housing incentives to resettle in disaster-affected communities.* Incentive payments are generally offered in addition to other programs or funding (such as insurance), to encourage households to relocate in a suitable housing development or an area promoted by the community's comprehensive recovery plan. For example, a grantee may offer an incentive payment (possibly in addition to a buyout payment) for households that volunteer to relocate outside of a floodplain or to a lower-risk area. Therefore, 42 U.S.C. 5305(a) and associated regulations are waived to the extent necessary to allow the provision of housing incentives. Grantees providing housing incentives must maintain documentation, at least at a programmatic level, describing how the amount of assistance was determined to be necessary and reasonable. In addition, the incentives must be in accordance with the grantee's approved Action Plan and published program design(s). Note that this waiver does not permit a compensation program. Additionally, a grantee may require the incentive to be used for a particular purpose by the household receiving the assistance.

30. *Limitation on emergency grant payments—interim mortgage assistance.* 42 U.S.C. 5305(a)(8) is modified to extend interim mortgage assistance to qualified individuals from 3 months, for up to 20 months. Interim mortgage assistance is typically used in conjunction with a buyout program, or the rehabilitation or reconstruction of single family housing, during which mortgage payments may be due but the home is uninhabitable. The time required for a household to complete the rebuilding process may often extend beyond three months. Thus, interim assistance is critical for many households facing financial hardship during this period. A grantee using this alternative requirement must document, in its policies and procedures, how it will determine the amount of assistance to be provided is necessary and reasonable.

31. *Acquisition of real property and flood buyouts.* Grantees under this notice are able to carry out property acquisition for a variety of purposes. However, the term ''buyouts'' as referenced in this Notice refers to acquisition of properties located in a floodway or floodplain that is intended to reduce risk from future flooding. HUD is providing alternative requirements for consistency with the application of other Federal resources commonly used for this type of activity.

a. *Buyout requirements:*

(1) Any property acquired, accepted, or from which a structure will be removed pursuant to the project will be dedicated and maintained in perpetuity for a use that is compatible with open space, recreational, or wetlands management practices;

(2) No new structure will be erected on property acquired, accepted or from which a structure was removed under the acquisition or relocation program other than (a) a public facility that is open on all sides and functionally related to a designated open space (*e.g.,* a park, campground, or outdoor recreation area); (b) a rest room; (c) a flood control structure; or (d) a structure that the local floodplain manager approves in writing before the commencement of the construction of the structure;

(3) After receipt of the assistance, with respect to any property acquired, accepted, or from which a structure was removed under the acquisition or relocation program, no subsequent application for additional disaster assistance for any purpose will be made by the recipient to any Federal entity in perpetuity;

(4) Grantees have the discretion to determine an appropriate valuation method (including the use of pre-flood value or post-flood value as a basis for property value). However, in using CDBG–DR funds for buyouts, the grantee must uniformly apply whichever valuation method it chooses;

(5) All buyout activities must be classified using the ''buyout'' activity type in the DRGR system; and

(6) Any State grantee implementing a buyout program or activity must consult with affected UGLGs.

b. *Redevelopment of acquired properties.*

(1) Properties purchased through a buyout program may not typically be redeveloped, with a few exceptions. See subparagraph a(2), above.

(2) Grantees may redevelop an acquired property if: (a) the property is not acquired through a buyout program, and (b) the purchase price is based on the property's post-flood fair market value (the pre-flood value may not be used). In addition to the purchase price, grantees may opt to provide relocation assistance to the owner of a property that will be redeveloped if the property is purchased by the grantee or subgrantee through voluntary acquisition, and the owner's need for additional assistance is documented.

(3) In carrying out acquisition activities, grantees must ensure they are in compliance with their long-term redevelopment plans.

32. *Alternative requirement for housing rehabilitation—assistance for second homes.* The Department is instituting an alternative requirement to the rehabilitation provisions at 42 U.S.C. 5305(a) as follows: a ''second home'', as defined in IRS Publication 936 (mortgage interest deductions), is not eligible for rehabilitation assistance, residential incentives, or to participate in a CDBG–DR buyout program (as defined by this Notice).

33. *Flood insurance.* Grantees, recipients, and subrecipients must implement procedures and mechanisms to ensure that assisted property owners comply with all flood insurance requirements, including the purchase and notification requirements described below, prior to providing assistance. For additional information, please consult with the Field Environmental Officer in the local HUD Field Office or review the guidance on flood insurance requirements on HUD's Web site.

a. *Flood insurance purchase requirements.* HUD does not prohibit the use of CDBG–DR funds for existing residential buildings in the Special Flood Hazard Area (SFHA) (or ''100-year'' floodplain). However, Federal laws and regulations related to both flood insurance and floodplain management must be followed, as applicable. With respect to flood insurance, a HUD-assisted homeowner for a property located in the SFHA must obtain and maintain flood insurance in the amount and duration prescribed by FEMA's National Flood Insurance Program. Section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a) mandates the purchase of flood insurance protection for any HUD-assisted property within the SFHA.

b. *Future Federal assistance to owners remaining in a floodplain.*

(1) Section 582 of the National Flood Insurance Reform Act of 1994, as amended, (42 U.S.C. 5154a) prohibits flood disaster assistance in certain circumstances. In general, it provides that no Federal disaster relief assistance made available in a flood disaster area

may be used to make a payment (including any loan assistance payment) to a person for repair, replacement, or restoration for damage to any personal, residential, or commercial property if that person at any time has received Federal flood disaster assistance that was conditioned on the person first having obtained flood insurance under applicable Federal law and the person has subsequently failed to obtain and maintain flood insurance as required under applicable Federal law on such property. This means that a grantee may not provide disaster assistance for the repair, replacement, or restoration to a person who has failed to meet this requirement.

(2) Section 582 also implies a responsibility for a grantee that receives CDBG–DR funds or that designates annually appropriated CDBG funds for disaster recovery. That responsibility is to inform property owners receiving disaster assistance that triggers the flood insurance purchase requirement that they have a statutory responsibility to notify any transferee of the requirement to obtain and maintain flood insurance, and that the transferring owner may be liable if he or she fails to do so. These requirements are described below.

(3) Duty to notify. In the event of the transfer of any property described in subparagraph (5), the transferor shall, not later than the date on which such transfer occurs, notify the transferee in writing of the requirements to:

(a) Obtain flood insurance in accordance with applicable Federal law with respect to such property, if the property is not so insured as of the date on which the property is transferred; and

(b) Maintain flood insurance in accordance with applicable Federal law with respect to such property. Such written notification shall be contained in documents evidencing the transfer of ownership of the property.

(4) Failure to notify. If a transferor fails to provide notice as described above and, subsequent to the transfer of the property:

(a) The transferee fails to obtain or maintain flood insurance, in accordance with applicable federal law, with respect to the property;

(b) The property is damaged by a flood disaster; and

(c) Federal disaster relief assistance is provided for the repair, replacement, or restoration of the property as a result of such damage, the transferor shall be required to reimburse the Federal Government in an amount equal to the amount of the Federal disaster relief assistance provided with respect to the property.

(5) The notification requirements apply to personal, commercial, or residential property for which Federal disaster relief assistance made available in a flood disaster area has been provided, prior to the date on which the property is transferred, for repair, replacement, or restoration of the property, if such assistance was conditioned upon obtaining flood insurance in accordance with applicable Federal law with respect to such property.

(6) The term ''Federal disaster relief assistance'' applies to HUD or other Federal assistance for disaster relief in ''flood disaster areas.'' The term ''flood disaster area'' is defined in section 582(d)(2) of the National Flood Insurance Reform Act of 1994, as amended, to include an area receiving a presidential declaration of a major disaster or emergency as a result of flood conditions.

C. Infrastructure (Public Facilities, Public Improvements, Public Buildings)

34. *Buildings for the general conduct of government.* 42 U.S.C. 5305(a) is waived to the extent necessary to allow grantees to fund the rehabilitation or reconstruction of public buildings that are otherwise ineligible. HUD believes this waiver is consistent with the overall purposes of the HCD Act, and is necessary for many grantees to adequately address critical infrastructure needs created by the disaster.

35. *Use of CDBG as Match.* Additionally, as provided by the HCD Act, funds may be used as a matching requirement, share, or contribution for any other Federal program when used to carry out an eligible CDBG–DR activity. This includes programs or activities administered by the Federal Emergency Management Agency (FEMA) or the U.S. Army Corps of Engineers (USACE).

D. Economic Revitalization.

36. *National Objective Documentation for Economic Development Activities.* 24 CFR 570.483(b)(4)(i) and 570.208(a)(4)(i) are waived to allow the grantees under this Notice to identify low- and moderate-income jobs benefit by documenting, for each person employed, the name of the business, type of job, and the annual wages or salary of the job. HUD will consider the person income-qualified if the annual wages or salary of the job is at or under the HUD-established income limit for a one-person family. This method replaces the standard CDBG requirement in which grantees must review the annual wages or salary of a job in comparison to the person's total household income and size (i.e., number of persons). Thus, it streamlines the documentation process by allowing the collection of wage data from the assisted business for each position created or retained, rather than from each individual household.

This alternative requirement has been granted on several prior occasions to CDBG–DR grantees, and to date, those grants have not exhibited any issues of concern in calculating the benefit to low- and moderate-income persons. The Department has determined that, in the context of disaster recovery, this waiver is consistent with the HCD Act.

37. *Public benefit for certain economic development activities.* The public benefit provisions set standards for individual economic development activities (such as a single loan to a business) and for economic development activities in the aggregate. Currently, public benefit standards limit the amount of CDBG assistance per job retained or created, or the amount of CDBG assistance per low- and moderate-income person to which goods or services are provided by the activity. These dollar thresholds can impede recovery by limiting the amount of assistance the grantee may provide to a critical activity.

This Notice waives the public benefit standards at 42 U.S.C. 5305(e)(3), 24 CFR 570.482(f)(1), (2), (3), (4)(i), (5), and (6), and 570.209(b)(1), (2), (3)(i), (4), for economic development activities designed to create or retain jobs or businesses (including, but not limited to, long-term, short-term, and infrastructure projects). However, grantees shall report and maintain documentation on the creation and retention of total jobs; the number of jobs within certain salary ranges; the average amount of assistance provided per job, by activity or program; the North American Industry Classification System (NAICS) code for each business assisted; and the types of jobs. HUD is also waiving 570.482(g) and 570.209(c) and (d) to the extent these provisions are related to public benefit.

38. *Clarifying note on Section 3 income documentation requirements.* Pursuant to the U.S. Housing Act of 1937 (42 U.S.C. 1437a(b)(2)) and 24 CFR 135.5, the Secretary is authorized to establish income limits to consider an individual to be a Section 3 resident. This Notice authorizes grantees to determine that an individual is eligible to be considered a Section 3 resident if the annual wages or salary of the person are at, or under, the HUD-established income limit for a one-person family for the jurisdiction.

39. *Waiver and modification of the job relocation clause to permit assistance to help a business return.* Traditional CDBG requirements prevent program participants from providing assistance to a business to relocate from one labor market area to another—if the relocation is likely to result in a significant loss of jobs in the labor market from which the business moved. This prohibition can be a critical barrier to reestablishing and rebuilding a displaced employment base after a major disaster. Therefore, 42 U.S.C. 5305(h), 24 CFR 570.210, and 24 CFR 570.482(h) are waived to allow a grantee to provide assistance to any business that was operating in the disaster-declared labor market area before the incident date of the applicable disaster and has since moved, in whole or in part, from the affected area to another State or to a labor market area within the same State to continue business.

40. *Waiver to permit some activities in support of the tourism industry (State of New Jersey only).* The State of New Jersey plans to provide disaster recovery grant assistance to support the State's $38 billion tourism industry and promote travel to communities in the disaster-impacted areas and has requested an eligibility waiver for such activities. Without such intervention, the State estimates a $950 million loss in the third quarter of 2013. Tourism industry support, such as a national consumer awareness advertising campaign for an area in general, is ineligible for regular CDBG assistance. However, such support was eligible, within limits, for CDBG–DR funds appropriated for recovery of Lower Manhattan following the September 11, 2001, terrorist attacks, and HUD understands that such support can be a useful recovery tool in a damaged regional economy that depends on tourism for many of its jobs and tax revenues. However, because the State of New Jersey is proposing advertising and marketing activities rather than direct assistance to tourism-dependent businesses, and because long-term benefit from the proposed activities must be derived using indirect means, 42 U.S.C. 5305(a) and 24 CFR 570.489(f) are waived only to the extent necessary to make eligible use of no more than $25 million for assistance for the tourism industry, including promotion of a community or communities in general, provided the assisted activities are designed to support tourism to the most impacted and distressed areas related to the effects of Hurricane Sandy. This waiver will expire at the end of the grantee's two year expenditure period.

41. *Alternative requirement for assistance to businesses, including privately-owned utilities.* The Department is instituting an alternative requirement to the provisions at 42 U.S.C. 5305(a) as follows: when grantees under this Notice provide funds to for-profit businesses, such funds may only be provided to a small business, as defined by the SBA under 13 CFR Part 121. CDBG–DR funds made available under this Notice may also not be used to assist a privately-owned utility for any purpose.

E. Certifications and Collection of Information.

42. *Certifications waiver and alternative requirement.* Sections 91.325 and 91.225 of title 24 of the Code of Federal Regulations are waived. Each State or UGLG receiving a direct allocation under this Notice must make the following certifications with its Action Plan:

a. The grantee certifies that it will affirmatively further fair housing, which means that it will conduct an analysis to identify impediments to fair housing choice within its jurisdiction and take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting the analysis and actions in this regard (see 24 CFR 570.487(b)(2) and 570.601(a)(2)). In addition, the grantee certifies that agreements with subrecipients will meet all civil rights related requirements pursuant to 24 CFR 570.503(b)(5).

b. The grantee certifies that it has in effect and is following a residential anti-displacement and relocation assistance plan in connection with any activity assisted with funding under the CDBG program.

c. The grantee certifies its compliance with restrictions on lobbying required by 24 CFR part 87, together with disclosure forms, if required by part 87.

d. The grantee certifies that the Action Plan for Disaster Recovery is authorized under State and local law (as applicable) and that the grantee, and any contractor, subrecipient, or designated public agency carrying out an activity with CDBG–DR funds, possess(es) the legal authority to carry out the program for which it is seeking funding, in accordance with applicable HUD regulations and this Notice.

e. The grantee certifies that activities to be administered with funds under this Notice are consistent with its Action Plan.

f. The grantee certifies that it will comply with the acquisition and relocation requirements of the URA, as amended, and implementing regulations at 49 CFR part 24, except where waivers or alternative requirements are provided for in this Notice.

g. The grantee certifies that it will comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), and implementing regulations at 24 CFR part 135.

h. The grantee certifies that it is following a detailed citizen participation plan that satisfies the requirements of 24 CFR 91.105 or 91.115, as applicable (except as provided for in notices providing waivers and alternative requirements for this grant). Also, each UGLG receiving assistance from a State grantee must follow a detailed citizen participation plan that satisfies the requirements of 24 CFR 570.486 (except as provided for in notices providing waivers and alternative requirements for this grant).

i. Each State receiving a direct award under this Notice certifies that it has consulted with affected UGLGs in counties designated in covered major disaster declarations in the non-entitlement, entitlement, and tribal areas of the State in determining the uses of funds, including method of distribution of funding, or activities carried out directly by the State.

j. The grantee certifies that it is complying with each of the following criteria:

(1) Funds will be used solely for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas for which the President declared a major disaster in the aftermath of Hurricane Sandy, pursuant to the Stafford Act.

(2) With respect to activities expected to be assisted with CDBG–DR funds, the Action Plan has been developed so as to give the maximum feasible priority to activities that will benefit low- and moderate-income families.

(3) The aggregate use of CDBG–DR funds shall principally benefit low- and moderate-income families in a manner that ensures that at least 50 percent of the grant amount is expended for activities that benefit such persons.

(4) The grantee will not attempt to recover any capital costs of public improvements assisted with CDBG–DR grant funds, by assessing any amount against properties owned and occupied by persons of low- and moderate-income, including any fee charged or assessment made as a condition of obtaining access to such public improvements, unless: (a) disaster recovery grant funds are used to pay the proportion of such fee or assessment that relates to the capital costs of such

public improvements that are financed from revenue sources other than under this title; or (b) for purposes of assessing any amount against properties owned and occupied by persons of moderate income, the grantee certifies to the Secretary that it lacks sufficient CDBG funds (in any form) to comply with the requirements of clause (a).

k. The grantee certifies that it (and any subrecipient or recipient)) will conduct and carry out the grant in conformity with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and the Fair Housing Act (42 U.S.C. 3601–3619) and implementing regulations.

l. The grantee certifies that it has adopted and is enforcing the following policies. In addition, States receiving a direct award must certify that they will require UGLGs that receive grant funds to certify that they have adopted and are enforcing:

(1) A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in nonviolent civil rights demonstrations; and

(2) A policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location that is the subject of such nonviolent civil rights demonstrations within its jurisdiction.

m. Each State or UGLG receiving a direct award under this Notice certifies that it (and any subrecipient or recipient) has the capacity to carry out disaster recovery activities in a timely manner; or the State or UGLG will develop a plan to increase capacity where such capacity is lacking.

n. The grantee will not use grant funds for any activity in an area delineated as a special flood hazard area or equivalent in FEMA's most recent and current data source unless it also ensures that the action is designed or modified to minimize harm to or within the floodplain in accordance with Executive Order 11988 and 24 CFR part 55. The relevant data source for this provision is the latest issued FEMA data or guidance, which includes advisory data (such as Advisory Base Flood Elevations) or preliminary and final Flood Insurance Rate Maps.

o. The grantee certifies that its activities concerning lead-based paint will comply with the requirements of 24 CFR part 35, subparts A, B, J, K, and R.

p. The grantee certifies that it will comply with applicable laws.

q. The grantee certifies that it has reviewed the requirements of this Notice and requirements of Public Law 113–2 applicable to funds allocated by this Notice, and that it has in place proficient financial controls and procurement processes and has established adequate procedures to prevent any duplication of benefits as defined by section 312 of the Stafford Act, to ensure timely expenditure of funds, to maintain comprehensive Web sites regarding all disaster recovery activities assisted with these funds, and to detect and prevent waste, fraud, and abuse of funds.

43. *Information collection approval note.* HUD has approval for information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–20) under OMB control number 2506–0165. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, nor is a person required to respond to, a collection of information, unless the collection displays a valid control number.

VII. Duration of Funding

The Appropriations Act requires that HUD obligate all funds provided under Chapter 9, Community Development Fund, not later than September 30, 2017. Concurrently, section 904(c) of the Appropriations Act requires that all funds be expended within two years of the date HUD obligates funds. Therefore, each grantee must expend all funds within two years of the date HUD signs the grant agreement with the grantee. Note that if a grantee amends its Action Plan to program additional funds that the Department has allocated to it, the grant agreement must also be revised. As stated in paragraph 1.a, under section VI of this Notice, the requirement for each grantee to expend funds within two years is triggered by each amendment to the grant agreement. That is, each grant amendment has its own expenditure deadline. Pursuant to section 904(c) of the Appropriations Act, grantees or HUD may request waivers of the two-year expenditure deadline from the Office of Management and Budget. For any funds that the grantee believes will not be expended by the deadline, it must submit a letter to HUD justifying why it is necessary to extend the deadline for a specific portion of funds. The letter must detail the compelling legal, policy, or operational challenges for any such waiver, and must also identify the date by when the specified portion of funds will be expended. Funds remaining in the grantee's line of credit at the time of this expenditure deadline will be returned to the U.S. Treasury.

VIII. Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for the disaster recovery grants under this Notice are as follows: 14.218; 14.228.

IX. Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

Dated: February 28, 2013.

Mark Johnston,

Deputy Assistant Secretary for Special Needs Programs.

Appendix A—Allocation Methodology

To expedite recovery while recognizing that time is needed to get a full understanding of long-term recovery needs relating to eligible disasters supported by Public Law 113–2, this allocation provides $5.4 billion of the $16 billion, reserving the balance to address the full scope of needs when better information is available.

Background

Public Law 113–2 states:

For an additional amount for ''Community Development Fund'', $16,000,000,000, to remain available until September 30, 2017, for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas resulting from a major disaster declared pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) due to Hurricane Sandy and other eligible events in calendar years 2011, 2012, and 2013, for activities authorized under title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.):

Provided, That funds shall be awarded directly to the State or unit of general local government as a grantee at the discretion of the Secretary of Housing and Urban Development:

Provided further, That the Secretary shall allocate to grantees not less than 33 percent

of the funds provided under this heading within 60 days after the enactment of this Act based on the best available data:

Provided further, That prior to the obligation of funds, a grantee shall submit a plan to the Secretary for approval detailing the proposed use of all funds, including criteria for eligibility and how the use of these funds will address long-term recovery and restoration of infrastructure and housing and economic revitalization in the most impacted and distressed areas:

The legislation specifies that the CDBG–DR funds are to be used ''for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas resulting from a major disaster'' and further specifies that the funds are not to be used for activities reimbursable by FEMA or the Corps of Engineers.

The language also calls for HUD to use ''best available'' data to make its allocation. For this allocation, similar to prior allocations, HUD makes a determination of unmet needs by estimating unmet needs related to the main intended uses of the funds:

• ''restoration of * * * housing''. We make an estimate with best available data on the amount of housing damage not likely to be covered by insurance, SBA disaster loans, or FEMA housing assistance. To target the ''most impacted and distressed areas'', the calculation limits the need calculation only to homes with high levels of individual damage (see below).

• ''economic revitalization''. We make an estimate with best available data on the amount of damage to businesses applying for an SBA loan that are expected to be turned down, usually because of inadequate credit or income to support the needed loan amount.

• ''restoration of infrastructure''. Due to the early stage of the disaster, HUD did not use data on infrastructure need for this first allocation, pending getting better information on infrastructure needs which will be used in a later allocation. That noted, grantees may use this initial allocation to begin addressing infrastructure needs.

These estimated needs are then summed together and an allocation is made among the grantee universe based on their proportional share of ''unmet needs''. At this point, there is good data on number of affected households and likely damage, but there is less complete data on the extent other resources have addressed those needs, specifically:

• Severe unmet housing needs. HUD limits the calculation of unmet needs to only properties with significant damage. This goes toward meeting the Congressional requirement of most impacted. Information on the adequacy of insurance to address housing needs was still very early in the disaster response, a high percentage of affected property owners are still determining how much of their recovery needs will be covered by insurance. To adjust for this uncertainty, HUD applied assumptions about insurance coverage rates to calculate the severe housing needs.

• Unmet business loss. It is very early in the disaster response to accurately estimate the needs for business to recover. This estimate looks at the properties that have applied for SBA disaster loans and extrapolates both estimated damage and disapproval rates based on the applications requested to date. As with the housing estimates, HUD applies an assumption about expected SBA denial rates.

Methodology for Calculating Unmet Needs

Available Data

The ''best available'' data HUD staff have identified as being available to calculate unmet needs at this time for the targeted disasters come from the following data sources:

• FEMA Individual Assistance program data on housing unit damage;

• SBA for management of its disaster assistance loan program for housing repair and replacement;

• SBA for management of its disaster assistance loan program for business real estate repair and replacement as well as content loss; and

Calculating Unmet Housing Needs

The core data on housing damage for both the unmet housing needs calculation and the concentrated damage are based on home inspection data for FEMA's Individual Assistance program. For unmet housing needs, the FEMA data are supplemented by Small Business Administration data from its Disaster Loan Program. HUD calculates ''unmet housing needs'' as the number of housing units with unmet needs times the estimated cost to repair those units less repair funds already provided by FEMA, where:

• Each of the FEMA inspected owner units are categorized by HUD into one of five categories:

○ Minor-Low: Less than $3,000 of FEMA inspected *real property* damage

○ Minor-High: $3,000 to $7,999 of FEMA inspected *real property* damage

○ Major-Low: $8,000 to $14,999 of FEMA inspected *real property* damage

○ Major-High: $15,000 to $28,800 of FEMA inspected *real property* damage and/or 1 to 4 feet of flooding on the first floor.

○ Severe: Greater than $28,800 of FEMA inspected *real property* damage or determined destroyed and/or 4 or more feet of flooding on the first floor.

To meet the statutory requirement of ''most impacted'' in this legislative language, homes are determined to have a high level of damage if they have damage of ''major-low'' or higher. That is, they have a real property FEMA inspected damage of $8,000 or flooding over 1 foot. Furthermore, a homeowner is determined to have unmet needs if they have received a FEMA grant to make home repairs. For other homeowners at this stage of the disaster, assumptions are made about the likely percent of damage *not covered* by insurance. This is assumed to increase by severity of damage to the home. The assumptions applied to ascertain the range of allocations were 30 percent for homes with major-low damage; 50 percent for homes with major-high damage; and 70 percent for homes with severe damage.

• FEMA does not inspect rental units for real property damage so personal property damage is used as a proxy for unit damage. Each of the FEMA inspected renter units are categorized by HUD into one of five categories:

○ Minor-Low: Less than $1,000 of FEMA inspected *personal property* damage

○ Minor-High: $1,000 to $1,999 of FEMA inspected *personal property* damage

○ Major-Low: $2,000 to $3,499 of FEMA inspected *personal property* damage

○ Major-High: $3,500 to $7,499 of FEMA inspected *personal property* damage or 1 to 4 feet of flooding on the first floor.

○ Severe: Greater than $7,500 of FEMA inspected *personal property* damage or determined destroyed and/or 4 or more feet of flooding on the first floor.

For rental properties, to meet the statutory requirement of ''most impacted'' in this legislative language, homes are determined to have a high level of damage if they have damage of ''major-low'' or higher. That is, they have a FEMA personal property damage assessment of $2,000 or greater or flooding over 1 foot. Furthermore, landlords are presumed to have adequate insurance coverage unless the unit is occupied by a renter with income of $30,000 or less. Units are occupied by a tenant with income less than $30,000 are used to calculate likely unmet needs for affordable rental housing.

• The average cost to fully repair a home for a specific disaster *to code* within each of the damage categories noted above is calculated using the average real property damage repair costs determined by the Small Business Administration for its disaster loan program for the subset of homes inspected by both SBA and FEMA. Because SBA is inspecting for full repair costs, it is presumed to reflect the full cost to repair the home, which is generally more than the FEMA estimates on the cost to make the home habitable. If fewer than 100 SBA inspections are made for homes within a FEMA damage category, the estimated damage amount in the category for that disaster has a cap applied at the 75th percentile of all damaged units for that category for all disasters and has a floor applied at the 25th percentile.

Calculating Economic Revitalization Needs

Based on SBA disaster loans to businesses, HUD used the sum of real property and real content loss of small businesses not receiving an SBA disaster loan times 85 percent. This is adjusted upward by a per business unmet need times the number of applications denied pre-inspection for inadequate credit or income or the loan was still in processing and did not yet have an inspection.

Because applications denied for poor credit or income are the most likely measure of requiring the type of assistance available with CDBG recovery funds, the calculated unmet business needs for each state are adjusted upwards by the proportion of total application that were denied at the pre-process stage because of poor credit or inability to show repayment ability.

[FR Doc. 2013–05170 Filed 3–4–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5699–N–01]

Notice of Single Family Loan Sales (SFLS 2013–1)

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of sales of mortgage loans.

SUMMARY: This notice announces HUD's intention to competitively sell certain unsubsidized single family mortgage loans, in a sealed bid sale offering called SFLS 2013–1, without Federal Housing Administration (FHA) mortgage insurance. This notice also generally describes the bidding process for the sale and describes certain persons who are ineligible to bid. This first sale of Fiscal Year (FY) 2013 is scheduled for March 2013. FHA also expects to conduct two additional sales in FY 2013 in June and September 2013.

DATES: The Bidder's Information Package (BIP) was made available to qualified bidders on or about February 20, 2013. Bids for the 2013–1 sale will be accepted on two Bid Dates and must be submitted on those dates, which are currently scheduled for March 20, 2013 and March 27, 2013 (Bid Dates). HUD anticipates that award(s) will be made on or about March 21, 2013, for the first offering, and March 28, 2013, for the second (the Award Dates).

ADDRESSES: To become a qualified bidder and receive the BIP, prospective bidders must complete, execute, and submit a Confidentiality Agreement and a Qualification Statement acceptable to HUD. Both documents are available via the HUD Web site at: *http://www.hud.gov/sfloansales* or via: *http://www.DebtX.com.*

Please mail and fax executed documents to SEBA Professional Services: SEBA Professional Services, c/o The Debt Exchange, 133 Federal Street, 10th Floor, Boston, MA 02111, Attention: HUD SFLS Loan Sale Coordinator, Fax: 1–617–531–3499.

FOR FURTHER INFORMATION CONTACT: John Lucey, Deputy Director, Asset Sales Office, Room 3136, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–8000; telephone 202–708–2625, extension 3927. Hearing- or speech-impaired individuals may call 202–708–4594 (TTY). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: HUD announces its intention to sell in SFLS 2013–1 certain unsubsidized non-performing mortgage loans (Mortgage Loans) secured by single family properties located throughout the United States. A listing of the Mortgage Loans is included in the due diligence materials made available to qualified bidders. The Mortgage Loans will be sold without FHA insurance and with servicing released. HUD will offer qualified bidders an opportunity to bid competitively on the Mortgage Loans.

The Loans will be offered on two sale dates. On March 20, 2013, the Department will offer national loan pools for bid. On March 27, 2013, the Department will offer regionally-based pools, with additional purchaser requirements, that are called the Neighborhood Stabilization Outcome pools.

The Bidding Process

The BIP describes in detail the procedure for bidding in SFLS 2013–1. The BIP also includes a standardized non-negotiable Conveyance, Assignment and Assumption Agreement (CAA Agreement). Qualified bidders will be required to submit a deposit with their bid. Deposits are calculated based upon each qualified bidder's aggregate bid price.

HUD will evaluate the bids submitted and determine the successful bid, in terms of the best value to HUD, in its sole and absolute discretion. If a qualified bidder is successful, the qualified bidder's deposit will be non-refundable and will be applied toward the purchase price. Deposits will be returned to unsuccessful bidders. For the 2013–1 sale actions, settlements are expected to take place on or about April 22, 2013 and May 20, 2013.

This notice provides some of the basic terms of sale. The CAA Agreement, which is included in the BIP, provides comprehensive contractual terms and conditions. To ensure a competitive bidding process, the terms of the bidding process and the CAA Agreement are not subject to negotiation.

Due Diligence Review

The BIP describes how qualified bidders may access the due diligence materials remotely via a high-speed Internet connection.

Mortgage Loan Sale Policy

HUD reserves the right to remove Mortgage Loans from SFLS 2013–1 at any time prior to the Award Date. HUD also reserves the right to reject any and all bids, in whole or in part, and include any Mortgage Loans in a later sale. Deliveries of Mortgage Loans will occur in at least two monthly settlements and the number of Mortgage Loans delivered will vary depending upon the number of Mortgage Loans the Participating Servicers have submitted for the payment of an FHA insurance claim. The Participating Servicers will not be able to submit claims on loans that are not included in the Mortgage Loan Portfolio set forth in the BIP.

There can be no assurance that any Participating Servicer will deliver a minimum number of Mortgage Loans to HUD or that a minimum number of Mortgage Loans will be delivered to the Purchaser.

The 2013–1 sale of Mortgage Loans are assigned to HUD pursuant to section 204(a)(1)(A) of the National Housing Act as amended under Title VI of the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1999. The sale of the Mortgage Loans is pursuant to section 204(g) of the National Housing Act.

Mortgage Loan Sale Procedure

HUD selected an open competitive whole-loan sale as the method to sell the Mortgage Loans for this specific sale transaction. For the SFLS 2013–1, HUD has determined that this method of sale optimizes HUD's return on the sale of these Mortgage Loans, affords the greatest opportunity for all qualified bidders to bid on the Mortgage Loans, and provides the quickest and most efficient vehicle for HUD to dispose of the Mortgage Loans.

Bidder Ineligibility

Note: Related Entities, as used in this Notice, are defined as (a) two entities that have (i) significant common purposes and substantial common membership or (ii) directly or indirectly substantial common direction or control; or (b) either entity owns (directly or through one or more entities) a 50 percent or greater interest in the capital or profits of the other. For this purpose, entities treated as related entities under this definition shall be treated as one entity.

In order to bid in the 2013–1 sale as a qualified bidder, a prospective bidder must complete, execute and submit both a Confidentiality Agreement and a Qualification Statement acceptable to HUD and applicable to the loan pool being purchased. If any of the following apply to (i) a prospective bidder, (ii) the prospective bidder's significant (>10%) owners and persons with authority or control over the prospective bidder; (iii) any individuals/entities related to the prospective bidder (''Related Entities'' as defined below) or (iv) significant (>10%) owners and person with authority or control of such Related Entities, then the prospective bidder is

ineligible to bid on any of the Mortgage Loans included in SFLS:

1. The prospective bidder is an employee of HUD, a member of such employee's household, or an entity owned or controlled by any such employee or member of such an employee's household with household to be inclusive of the employee's father, mother, stepfather, stepmother, brother, sister, stepbrother, stepsister, son, daughter, stepson, stepdaughter, grandparent, grandson, granddaughter, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, first cousin, the spouse of any of the foregoing, and the employee's spouse;

2. The prospective bidder is an individual or entity that is currently debarred, suspended, or excluded from doing business with HUD pursuant to the Governmentwide Suspension and Debarment regulations at Title 2 of the Code of Federal Regulations, parts 180 and 24243) the prospective bidder is an individual or entity that has been suspended, debarred or otherwise restricted by any Department or Agency of the Federal Government or of a State Government from doing business with such Department or Agency;

3. The prospective bidder is an individual or entity that has been debarred, suspended, or excluded from doing mortgage related business, including having a business license suspended, surrendered or revoked, by any federal, state or local government agency, division or department;

4. The prospective bidder is a contractor, subcontractor and/or consultant or advisor (including any agent, employee, partner, director, principal or affiliate of any of the foregoing) who performed services for or on behalf of HUD in connection with single family asset sales;

5. The prospective bidder is an individual or entity that uses the services, directly or indirectly, of any person or entity ineligible under subparagraphs 1 through 3 above to assist in preparing any of its bids on the Mortgage Loans;

6. The prospective bidder is an individual or entity which employs or uses the services of an employee of HUD (other than in such employee's official capacity) who is involved in single family asset sales;

7. The prospective bidder is an entity or individual that serviced or held any Mortgage Loan at any time during the 2-year period prior to the Award Date;

8. The prospective bidder is an entity or individual that is: (a) Any affiliate or principal of any entity or individual described in the preceding sentence (sub-paragraph 8); (b) any employee or subcontractor of such entity or individual during that 2-year period prior to Award Date; or (c) any entity or individual that employs or uses the services of any other entity or individual described in this paragraph in preparing its bid on such Mortgage Loan; or

9. The prospective bidder is an entity that has had its right to act as a Government National Mortgage Association (Ginnie Mae) issuer and its interest in mortgages backing Ginnie Mae mortgage-backed securities extinguished and terminated by Ginnie Mae.

Freedom of Information Act Requests

HUD reserves the right, in its sole and absolute discretion, to disclose information regarding SFLS 2013–1, including, but not limited to, the identity of any successful qualified bidder and its bid price or bid percentage for any pool of loans or individual loan, upon the closing of the sale of all the Mortgage Loans. Even if HUD elects not to publicly disclose any information relating to SFLS 2013–1, HUD will disclose any information that HUD is obligated to disclose pursuant to the Freedom of Information Act and all regulations promulgated thereunder.

Scope of Notice

This notice applies to SFLS 2013–1 and does not establish HUD's policy for the sale of other mortgage loans.

Dated: February 27, 2013.

Laura M. Marin,

Acting General Deputy Assistant Secretary for Housing.

[FR Doc. 2013–05086 Filed 3–4–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Invasive Species Advisory Committee; Meeting Cancellation

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of meeting cancellation.

SUMMARY: The meeting of the Invasive Species Advisory Committee (ISAC) scheduled for Thursday, March 7, 2013 and Friday, March 8, 2013; is cancelled. The ISAC new member orientation scheduled for Wednesday, March 6, 2013 is also cancelled. Notice of this meeting was published in the February 11, 2013 issue of the **Federal Register** (78 FR 9724). A correction to meeting dates was published on February 20, 2013 (78 FR 11899). Both events are cancelled due to budget sequestration, and will not be rescheduled.

FOR FURTHER INFORMATION CONTACT: The Designated Federal Official, Lori Williams, NISC Executive Director, 202–513–7243; or email to *Lori_Williams@ios.doi.gov*.

SUPPLEMENTARY INFORMATION: The ISAC is comprised of 31 nonfederal invasive species experts and stakeholders from across the nation. The purpose of the Advisory Committee is to provide advice to the National Invasive Species Council, as authorized by Executive Order 13112, on a broad array of issues related to preventing the introduction of invasive species and providing for their control and minimizing the economic, ecological, and human health impacts that invasive species cause. The Council is co-chaired by the Secretary of the Interior, the Secretary of Agriculture, and the Secretary of Commerce. The duty of the Council is to provide national leadership regarding invasive species issues.

Dated: February 28, 2013.

Lori Williams,

Executive Director, National Invasive Species Council.

[FR Doc. 2013–05115 Filed 3–4–13; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Wildland Fire Executive Council; Renewal

AGENCY: Department of the Interior.

ACTION: Renewal of the Wildland Fire Executive Council.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. Appendix 2, and with the concurrence of the General Services Administration, the Department of the Interior and the Department of Agriculture are renewing the Wildland Fire Executive Council (WFEC). The purpose of the WFEC is to provide advice on the coordinated national level wildland fire policy leadership, direction, and program oversight in support to the Wildland Fire Leadership Council.

FOR FURTHER INFORMATION CONTACT: Ms. Shari Eckhoff, Designated Federal Officer, 300 E Mallard Drive, Suite 170, Boise, Idaho 83706; telephone (208) 334–1552; fax (208) 334–1549; or email *shari_eckhoff@ios.doi.gov.*

SUPPLEMENTARY INFORMATION: The WFEC is being renewed as a discretionary

advisory committee under the authorities of the Secretary of the Interior and Secretary of Agriculture, in furtherance of 43 U.S.C. 1457 and provisions of the Fish and Wildlife Act of 1956 (16 U.S.C. 742a–742j), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et. seq*), the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee), and the National Forest Management Act of 1976 (16 U.S.C. 1600 *et.seq*) and in accordance with the provisions of the FACA, as amended, 5 U.S.C. Appendix 2. The Secretary of the Interior and Secretary of Agriculture certify that the renewal of the WFEC is necessary and is in the public interest.

The WFEC will conduct its operations in accordance with the provisions of the FACA. It will report to the Secretary of the Interior and Secretary of Agriculture through the Wildland Fire Leadership Council, which is comprised of, in part, the Assistant Secretary for Policy, Management and Budget and the Directors of National Park Service, the U.S. Fish and Wildlife Service, the Bureau of Land Management, the Bureau of Indian Affairs, and the U.S. Geological Survey for the Department of the Interior, and for the Department of Agriculture, the Under Secretary for Natural Resources and Environment, the Deputy Under Secretary for Natural Resources and Environment, and the Chief of the Forest Service.

The Department of the Interior's Office of Wildland Fire will provide support for the WFEC.

The purpose of the WFEC is to provide advice on the coordinated national level wildland fire policy leadership, direction, and program oversight in support to the Wildland Fire Leadership Council.

The WFEC will meet approximately 6–12 times a year. The Secretary of the Interior and the Secretary of Agriculture will appoint members on a staggered term basis for terms not to exceed 3 years.

Members of the WFEC shall be composed of representatives from the Federal government, and from among, but not limited to, the following interest groups. (1) Director, Department of the Interior, Office of Wildland Fire; (2) Director, United States Department of Agriculture, Forest Service, Fire and Aviation Management; (3) Assistant Administrator, U.S. Fire Administration; (4) National Wildfire Coordinating Group; (5) National Association of State Foresters; (6) International Association of Fire Chiefs; (7) Intertribal Timber Council; (8) National Association of Counties; (9) National League of Cities; and (10) National Governors' Association.

No individual who is currently registered as a Federal lobbyist is eligible to serve as a member of the WFEC.

Certification Statement: I hereby certify that the renewal of the Wildland Fire Executive Council is necessary and is in the public interest in connection with the performance of duties imposed on the Department of the Interior and the Department of Agriculture under 43 U.S.C. 1457 and provisions of the Fish and Wildlife Act of 1956 (16 U.S.C. 742a–742j), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et. seq*), the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee), and the National Forest Management Act of 1976 (16 U.S.C. 1600 *et seq.*).

Dated: February 19, 2013.

Ken Salazar,

Secretary of the Interior.

[FR Doc. 2013–05025 Filed 3–4–13; 8:45 am]

BILLING CODE 4310–J4–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLOR957000–L63100000–HD0000–13XL1165AF: HAG13–0130]

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 State Office, Portland, Oregon, 30 days from the date of this publication.

Willamette Meridian

Oregon

T. 22 S., R. 10 E., accepted January 18, 2013
T. 8 S., R. 19 E., accepted February 22, 2013
T. 39 S., R. 6 W., accepted February 22, 2013
T. 33 S., R. 5 W., accepted February 22, 2013
T. 22 S., R. 6 W., accepted February 22, 2013
T. 22 S., R. 10 E., accepted February 22, 2013
T. 28 S., R. 12 W., accepted February 22, 2013

Washington

T. 30 N., R. 7 W., accepted February 22, 2013

ADDRESSES: A copy of the plats may be obtained from the Public Room at the Bureau of Land Management, Oregon State Office, 333 SW. 1st Avenue, Portland, Oregon 97204, upon required payment.

FOR FURTHER INFORMATION CONTACT: Kyle Hensley, (503) 808–6132, 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: A person or party who wishes to protest against this survey must file a written notice with the Oregon State Director, Bureau of Land Management, stating that they wish to protest. A statement of reasons for a protest may be filed with the notice of protest and must be filed with the Oregon State Director within thirty days after the protest is filed. If a protest against the survey is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed or otherwise resolved.

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.

Mary J.M. Hartel,

Chief Cadastral Surveyor of Oregon/Washington.

[FR Doc. 2013–05000 Filed 3–4–13; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

Notice of Approved Class III Tribal Gaming Ordinances

AGENCY: National Indian Gaming Commission.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public of the approved Class III tribal gaming ordinances.

DATES: *Effective Date:* This notice is effective upon date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Shakira Ferguson, Office of General

Counsel at the National Indian Gaming Commission, 202–632–7003.

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act (IGRA), 25 U.S.C. 2701 *et seq.,* established the National Indian Gaming Commission (Commission). Section 2710 of IGRA authorizes the Chair of the Commission to approve Class II and Class III tribal gaming ordinances. Section 2710(d)(2)(B) of IGRA, as implemented by NIGC regulations, 25 CFR 522.8, requires the Chair to publish in the **Federal Register** approved Class III tribal gaming ordinances and the approvals thereof.

IGRA requires all tribal gaming ordinances to contain the same requirements concerning tribes' sole proprietary interest and responsibility for the gaming activity, use of net revenues, annual audits, health and safety, background investigations and licensing of key employees and primary management officials. The Commission, therefore, believes that publication of each ordinance in the **Federal Register** would be redundant and result in unnecessary cost to the Commission.

Thus, the Commission views the publishing a notice of approved Class III tribal gaming ordinances in the **Federal Register** as sufficient to meet the requirements of 25 U.S.C. 2710(d)(2)(B). Every approved tribal gaming ordinance, every approved ordinance amendment, and the approval thereof, are posted on the Commission's Web site (*www.nigc.gov*) under Reading Room, Gaming Ordinances. Also, the Commission will make copies of approved Class III ordinances available to the public upon request. Requests can be made in writing to the Office of General Counsel, National Indian Gaming Commission, Attention: Office of General Counsel, 1441 L Street NW., Suite 9100, Washington, DC 20005.

The following constitutes a consolidated list of all Tribes that have approved tribal gaming ordinances authorizing Class III gaming.

1. Absentee-Shawnee Tribe of Indian of Oklahoma
2. Agua Caliente Band of Cahuilla Indians
3. Ak-Chin Indian Community of the Maricopa Indian Reservation
4. Alabama-Quassarte Tribal Town
5. Alturas Indian Rancheria
6. Apache Tribe of Oklahoma
7. Assiniboine & Sioux Tribes of Fort Peck Indian Reservation
8. Augustine Band of Cahuilla Indians
9. Bad River Band of Lake Superior Tribe of Chippewa Indians
10. Barona Group of Captain Grande Band of Mission Indians
11. Bay Mills Indian Community
12. Bear River Band of Rohnerville Rancheria
13. Berry Creek Rancheria of Tyme Maidu Indians
14. Big Lagoon Rancheria
15. Big Pine Band of Owens Valley Paiute Shoshone Indians
16. Big Sandy Rancheria Band of Western Mono Indians
17. Big Valley Band of Pomo Indians
18. Blackfeet Tribe
19. Blue Lake Rancheria of California
20. Bois Forte Band of the Minnesota Chippewa Tribe
21. Buena Vista Rancheria of Me-Wuk Indians
22. Burns Paiute Tribe
23. Cabazon Band of Mission Indians
24. Cachil DeHe Band of Wintun Indians of the Colusa Indian Community
25. Caddo Nation of Oklahoma
26. Cahto Indian Tribe of the Laytonville Rancheria
27. Cahuilla Band of Mission Indians
28. California Valley Miwok Tribe
29. Campo Band of Diegueno Mission Indians
30. Chemehuevi Indian Tribe
31. Cher-Ae Heights Indian Community of the Trinidad Rancheria
32. Cherokee Nation of Oklahoma
33. Cheyenne and Arapahoe Tribes
34. Cheyenne River Sioux Tribe
35. Chickasaw Nation of Oklahoma
36. Chicken Ranch Rancheria of Me-Wuk Indians
37. Chippewa-Cree Tribe of the Rocky Boy's Reservation
38. Chitimacha Tribe of Louisiana
39. Choctaw Nation of Oklahoma
40. Citizen Potawatomi Nation
41. Cloverdale Rancheria of Pomo Indians
42. Cocopah Indian Tribe
43. Coeur d'Alene Tribe
44. Colorado River Indian Tribes
45. Comanche Nation of Oklahoma
46. Confederated Salish and Kootenai Tribes of the Flathead Reservation
47. Confederated Tribes and Bands of the Yakama Nation
48. Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians of Oregon
49. Confederated Tribes of the Chehalis Reservation
50. Confederated Tribes of the Colville Reservation
51. Confederated Tribes of the Grand Ronde Community of Oregon
52. Confederated Tribes of the Siletz Indians of Oregon
53. Confederated Tribes of the Umatilla Reservation
54. Confederated Tribes of the Warm Springs Reservation
55. Coquille Indian Tribe
56. Coushatta Tribe of Louisiana
57. Cow Creek Band of Umpqua Indians of Oregon
58. Coyote Valley Band of Pomo Indians of California
59. Crow Creek Sioux Tribe
60. Crow Indian Tribe of Montana
61. Delaware Tribe of Western Oklahoma
62. Delaware Tribe of Indians
63. Dry Creek Rancheria of Pomo Indians of California
64. Eastern Band of Cherokee Indians
65. Eastern Shawnee Tribe of Oklahoma
66. Eastern Shoshone Tribe of the Wind River Indian Reservation
67. Elem Indian Colony of Pomo Indians
68. Elk Valley Rancheria
69. Ely Shoshone Tribe of Nevada
70. Enterprise Rancheria of the Maidu Indians of California
71. Ewiiaapaayp Band of Kumeyaay Indians
72. Fallon Paiute-Shoshone Tribes
73. Federated Indians of Graton Rancheria
74. Flandreau Santee Sioux Tribe of South Dakota
75. Fond du Lac Band of Lake Superior Chippewa
76. Forest County Potawatomi Community
77. Fort Belknap Indian Community
78. Fort Independence Indian Community of Paiute Indians
79. Fort McDermitt Paiute-Shoshone Tribe of Nevada and Oregon
80. Fort McDowell Yavapai Nation
81. Fort Mojave Indian Tribe of Arizona, California and Nevada
82. Gila River Indian Community
83. Grand Portage Band of Chippewa Indians
84. Grand Traverse Band of Ottawa and Chippewa Indians
85. Greenville Rancheria of Maidu Indians of California
86. Grindstone Indian Rancheria of Wintun-Wailaki Indians of California
87. Guidiville Band of Pomo Indians
88. Habematolel Pomo of Upper Lake
89. Hannahville Indian Community
90. Ho-Chunk Nation of Wisconsin
91. Hoopa Valley Tribe
92. Hopland Band of Pomo Indians
93. Hualapai Indian Tribe
94. Iipay Nation of Santa Ysabel of California
95. Iowa Tribe of Kansas and Nebraska
96. Iowa Tribe of Oklahoma
97. Jackson Rancheria Band of Miwuk Indians
98. Jamestown S'Klallam Tribe of Washington
99. Jena Band of Choctaw Indians
100. Jicarilla Apache Nation
101. Kaibab Band of Paiute Indians
102. Kalispel Tribe of Indians

103. Karuk Tribe
104. Kaw Nation
105. Keweenaw Bay Indian Community
106. Kialegee Tribal Town
107. Kickapoo Tribe of Indians in Kansas
108. Kickapoo Tribe of Oklahoma
109. Kiowa Tribe of Oklahoma
110. Klamath Tribes
111. Klawock Cooperative Association
112. Kootenai Tribe of Idaho
113. Lac Courte Oreilles Band of Lake Superior Chippewa Indians
114. Lac du Flambeau Band of Lake Superior Chippewa Indians
115. Lac Vieux Desert Band of Lake Superior Chippewa Indians
116. LaJolla Band of Luiseno Indians
117. La Posta Band of Mission Indians
118. Las Vegas Paiute Tribe
119. Leech Lake Band of Chippewa Indians
120. Little River Band of Ottawa Indians
121. Little Traverse Bay Bands of Odawa Indians
122. Lower Brule Sioux Tribe
123. Lower Elwha Klallam Tribe
124. Lower Sioux Indian Community
125. Lummi Indian Tribe
126. Lytton Rancheria of California
127. Manchester Band of Pomo Indians of the Manchester-Point Arena Rancheria
128. Manzanita Band of Mission Indians
129. Mashantucket Pequot Tribe
130. Match-E-Be-Nash-She-Wish Band of the Potawatomi Indians of Michigan
131. Mechoopda Indian Tribe of Chico Rancheria
132. Menominee Indian Tribe of Wisconsin
133. Mescalero Apache Tribe
134. Miami Tribe of Oklahoma
135. Middletown Rancheria of Pomo Indians
136. Mille Lacs Band of Ojibwe
137. Mississippi Band of Choctaw Indians
138. Moapa Band of Paiute Indians
139. Modoc Tribe of Oklahoma
140. Mohegan Indian Tribe of Connecticut
141. Mooretown Rancheria of Maidu Indians
142. Morongo Band of Mission Indians
143. Muckleshoot Indian Tribe
144. Muscogee (Creek) Nation
145. Narragansett Indian Tribe
146. Navajo Nation
147. Nez Perce Tribe
148. Nisqually Indian Tribe
149. Nooksack Indian Tribe
150. Northern Arapaho Tribe of the Wind River Indians
151. Northern Cheyenne Tribe
152. Nottawaseppi Huron Band of Potawatomi
153. Oglala Sioux Tribe
154. Ohkay Owingeh
155. Omaha Tribe of Nebraska
156. Oneida Nation of New York
157. Oneida Tribe of Indians of Wisconsin
158. Osage Nation
159. Otoe-Missouri Tribe of Indians
160. Ottawa Tribe of Oklahoma
161. Paiute-Shoshone Indians of the Bishop Community
162. Pala Band of Luiseno Mission Indians
163. Pascua Yaqui Tribe of Arizona
164. Paskenta Band of Nomlaki Indians
165. Pauma Band of Mission Indians
166. Pawnee Nation of Oklahoma
167. Pechanga Band of Mission Indians
168. Peoria Tribe of Indians of Oklahoma
169. Picayune Rancheria of Chukchansi Indians
170. Pinoleville Band of Pomo Indians
171. Pit River Tribe
172. Poarch Band Creek Indians
173. Pokagon Band of Potawatomi Indians of Michigan
174. Ponca Tribe of Oklahoma
175. Ponca Tribe of Nebraska
176. Port Gamble S'Klallam Tribe
177. Prairie Band of Potawatomi Nation
178. Prairie Island Indian Community
179. Pueblo of Acoma
180. Pueblo of Isleta
181. Pueblo of Jemez
182. Pueblo of Laguna
183. Pueblo of Nambe
184. Pueblo of Picuris
185. Pueblo of Pojoaque
186. Pueblo of San Felipe
187. Pueblo of Sandia
188. Pueblo of Santa Ana
189. Pueblo of Santa Clara
190. Pueblo of Santo Domingo
191. Pueblo of Taos
192. Pueblo of Tesuque
193. Puyallup Tribe of Indians
194. Pyramid Lake Paiute Tribe
195. Quapaw Tribe of Indians
196. Quartz Valley Indian Community
197. Quechan Tribe of Fort Yuma Indian Reservation
198. Quileute Tribe
199. Quinault Indian Nation
200. Red Cliff Band of Lake Superior Chippewa Indians
201. Red Cliff, Sokaogon Chippewa and Lac Courte Oreilles Band
202. Red Lake Band of Chippewa Indians
203. Redding Rancheria
204. Redwood Valley Rancheria of Pomo Indians
205. Reno-Sparks Indian Colony
206. Resighini Rancheria of Coast Indian Community
207. Rincon Band of Luiseno Mission Indians
208. Robinson Rancheria of Pomo Indians
209. Rosebud Sioux Tribe
210. Round Valley Indian Tribe
211. Sac & Fox Nation of Oklahoma
212. Sac & Fox Tribe of Mississippi in Iowa
213. Sac & Fox Nation of Missouri in Kansas and Nebraska
214. Saginaw Chippewa Indian Tribe of Michigan
215. Salt River Pima-Maricopa Indian Community
216. Samish Indian Tribe
217. San Carlos Apache Tribe
218. San Manual Band of Mission Indians
219. San Pasqual Band of Diegueno Mission Indians
220. Santa Rosa Rancheria Tachi-Yokut Tribe
221. Santa Ynez Band of Chumash Mission Indians
222. Sauk-Suiattle Indian Tribe
223. Sault Ste. Marie Tribe of Chippewa Indians
224. Scotts Valley Band of Pomo Indians
225. Seminole Nation of Oklahoma
226. Seminole Tribe of Florida
227. Seneca Nation of Indians of New York
228. Seneca-Cayuga Tribe of Oklahoma
229. Shakopee Mdewakanton Sioux Community
230. Shawnee Tribe
231. Sherwood Valley Rancheria of Pomo Indians
232. Shingle Springs Band of Miwuk Indians
233. Shoalwater Bay Indian Tribe
234. Shoshone-Bannock Tribes of the Fort Hall Indian Reservation of Idaho
235. Sisseton-Wahpeton Oyate of the Lake Traverse Reservation
236. Skokomish Indian Tribe
237. Smith River Rancheria
238. Snoqualmie Tribe
239. Soboba Band of Luiseno Indians
240. Sokaogon Chippewa Community
241. Southern Ute Indian Tribe
242. Sprite Lake Tribe
243. Spokane Tribe of Indians
244. Squaxin Island Tribe
245. St. Croix Chippewa Indians of Wisconsin
246. St. Regis Mohawk Tribe
247. Standing Rock Sioux Tribe
248. Stillaguamish Tribe of Indians
249. Stockbridge-Munsee Community
250. Suquamish Tribe of the Port Madison Reservation
251. Susanville Indian Rancheria
252. Swinomish Indian Tribal Community
253. Sycuan Band of Diegueno Mission Indians
254. Table Mountain Rancheria
255. Te-Moak Tribe of Western Shoshone Indians of Nevada
256. Thlopthlocco Tribal Town

257. Three Affiliated Tribes of the Fort Berthold Reservation
258. Timbisha Shoshone Tribe
259. Tohono O'odham Nation
260. Tonkawa Tribe of Oklahoma
261. Tonto Apache Tribe
262. Torres Martinez Desert Cahuilla Indians
263. Tulalip Tribes of Washington
264. Tule River Tribe
265. Tunica-Biloxi Indians of Louisiana
266. Tuolumne Band of Me-Wuk Indians
267. Turtle Mountain Band of Chippewa Indians
268. Twenty-Nine Palms Band of Mission Indians
269. United Auburn Indian Community
270. Upper Sioux Community
271. Upper Skagit Indian Tribe of Washington
272. Ute Mountain Ute Tribe
273. U-tu-Utu-Gwaitu Paiute Tribe of Benton Paiute Reservation
274. Viejas Band of Kumeyaay Indians
275. Washoe Tribe of Nevada and California
276. White Earth Band of Chippewa Indians
277. White Mountain Apache Tribe
278. Wichita and Affiliated Tribes of Oklahoma
279. Winnebago Tribe of Nebraska
280. Wiyot Tribe of Table Bluff Reservation
281. Wyandotte Nation of Oklahoma
282. Yankton Sioux Tribe
283. Yavapai Apache Nation of the Camp Verde Indian Reservation
284. Yavapai-Prescott Indian Tribe
285. Yocha-De-He Wintun Nation
286. Yurok Tribe

National Indian Gaming Commission.

Tracie L. Stevens,

Chairwoman.

Daniel J. Little,

Associate Commissioner.

[FR Doc. 2013–04947 Filed 3–4–13; 8:45 am]

BILLING CODE 7565–02–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–12306; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before February 2, 2013. Pursuant to § 60.13 of 36 CFR Part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by March 20, 2013. 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: February 7, 2013.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

COLORADO

Adams County

Metzger Farm, 12080 Lowell Blvd., Westminster, 13000077

Jefferson County

Fruitdale Grade School, 10801 W. 44th Ave., Wheat Ridge, 13000078

Mesa County

Stranges Grocery, 226 Pitkin Ave., Grand Junction, 13000079

Moffat County

Lay School, (Rural School Buildings in Colorado MPS), 7 Eddy Ave., Lay, 13000080

FLORIDA

Leon County

Meridian Road, Roughly John Hancock Dr. to Georgia State Line, Tallahassee, 13000081

INDIANA

Allen County

Ninde-Mead-Farnsworth House, 734 E. State Blvd., Fort Wayne, 13000082

Dubois County

Wollenmann, Dr. Alois, House, 1150 Main St., Ferdinand, 13000083

La Porte County

Burnham, John and Isabel, House, (John Lloyd Wright in Northwest Indiana MPS) 2602 Lake Shore Dr., Long Beach, 13000085

Hoover-Timme House,(John Lloyd Wright in Northwest Indiana MPS) 2304 Hazeltine Dr., Long Beach, 13000086

Jackson, Lowell E. and Paula G., House, (John Lloyd Wright in Northwest Indiana MPS) 2935 Ridge Rd., Long Beach, 13000087

Jaworowski, George and Adele, House, (John Lloyd Wright in Northwest Indiana MPS) 3501 Lake Shore Dr., Duneland Beach, 13000088

Lake County

Keilman, Francis P. House, 9260 Patterson St., St. John, 13000084

Marion County

Gaseteria, Inc., 1031 E. Washington St., Indianapolis, 13000089

Noble County

Luckey Hospital, Jct. of US 33 & IN 109, Wolf Lake, 13000090

St. Joseph County

Haven Hubbard Home, 31895 Chicago Trail, New Carlisle, 13000091

Wabash County

Halderman-Van Buskirk Farmstead, 5653 N. 700 W., Roann, 13000092

Roann Historic District, Roughly bounded by IN 16, West, Ohio & Beamer Sts., Roann, 13000093

LOUISIANA

St. Bernard Parish

Pecan Grove Plantation House, (Louisiana's French Creole Architecture MPS) 10 Pecan Grove Ln., Meraux, 13000094

MASSACHUSETTS

Barnstable County

Old North Cemetery, US 6 & Aldrich Rd., Truro, 13000095

Pine Grove Cemetery, Cemetery Rd., Truro, 13000096

MONTANA

Cascade County

Great Falls High School Historic District, 1900 2nd Ave., S., Great Falls, 13000097

NEW YORK

Erie County

CLARA BROWN (sloop), 32 Fuhrman Rd., Buffalo, 13000098

Ulster County

Appeldoorn Farm, (Rochester MPS) 4938 US 209, Accord, 13000099

United States Lace Curtain Mills, 165 Cornell St., Kingston, 13000100

WISCONSIN

Clark County

Omaha Hotel, 317 W. 7th St., Neillsville, 13000101

WYOMING

Fremont County

Lookingbill, Helen, Site, Address Restricted, Dubois, 13000102

[FR Doc. 2013–04976 Filed 3–4–13; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–12362; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before February 9, 2013. Pursuant to § 60.13 of 36 CFR Part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by March 20, 2013. 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: February 14, 2013.

J. Paul Loether,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

ARIZONA

Maricopa County

Halm, George, House, 1548 W. Northern Ave., Phoenix, 13000105

CALIFORNIA

Los Angeles County

Markham Place Historic District, (Late 19th and Early 20th Century Development and Architecture in Pasadena MPS) Roughly bounded by California St., Pasadena Ave., Bellefontaine St. & Orange Grove Blvd., Pasadena, 13000106

GEORGIA

Morgan County

Hard Labor Creek State Park, Fairplay & Knox Chapel Rds., Rutledge, 13000107

IDAHO

Latah County

Kendrick Fraternal Temple, 614 E. Main, Kendrick, 13000108

IOWA

Lee County

Keokuk Union Depot, 200 Exchange St., Keokuk, 13000109

KENTUCKY

Fayette County

Liggett and Meyers Harpring Tobacco Storage Warehouse, 1211 Manchester St., Lexington, 13000110

Kenton County

Ludlow Theater, The, 322–326 Elm St., Ludlow, 13000111

Knott County

Hindman Historic District, Along Main St. & KY 160, Hindman, 13000112

Shelby County

Buck Creek Rosenwald School, 6712 Taylorsville Rd., Finchville, 13000113

MISSOURI

St. Louis Independent City

Tower Grove East Historic District, (South St. Louis Historic Working and Middle Class Streetcar Suburbs MPS) Roughly bounded by S. Grand, Louisiana, Nebraska, Gravois & Shenandoah Aves., St. Louis (Independent City), 13000114

NEW MEXICO

Mora County

Guadalupita—Coyote Historic District, Roughly Coyote Cr., Guadalupita, 13000115

NEW YORK

Tompkins County

Beach Road Bridge, Beach Rd. crossing W. Branch of Cayuga Inlet, Newfield, 13000103

NORTH CAROLINA

Jackson County

Judaculla Rock, 552 Judaculla Rock Rd., Cullowhee, 13000116

OREGON

Benton County

Irish Bend Covered Bridge No. 14169, (Oregon Covered Bridges TR) SW Campus Way Bike Path, Corvallis, 13000117

Clackamas County

Waverley Country Club Clubhouse, 100 SE. Waverly Dr., Portland, 13000118

Multnomah County

Bennes, John Virginius and Annice, House, 122 SW. Marconi Ave., Portland, 13000119

RHODE ISLAND

Providence County

Edgewood Historic District—Shaw Plat, (Edgewood Neighborhood, Cranston, R.I. MPS) Shaw & Marion Aves., parts of Narragansett Blvd. & Broad St., Cranston, 13000120

TENNESSEE

Davidson County

Kennedy, Thomas P. Jr., House (Boundary Increase), (Forest Hills, Tennessee MPS) 6231 Hillsboro Pike, Forest Hills, 13000121

Giles County

Bodenham Mill, 690 Bodenham Rd., Pulaski, 13000122

Montgomery County

Allen House (Boundary Increase), (Historic Family Farms in Middle Tennessee MPS) 2401 & 2409 Allen Griffey Rd., Clarksville, 13000123

Sumner County

Moye Boarding House, NE. corner of Wheeler & N. Russell Sts., Portland, 13000124

Tipton County

Oak Hill Farm, 1280 Keeling Rd., Stanton, 13000125

TEXAS

Tarrant County

Fort Worth Warehouse and Transfer Company Building, 201 S. Calhoun St., Fort Worth, 13000126

UTAH

Garfield County

Escalante Historic District, Roughly bounded by 300 North, 300 East, 300 South, 300 & 400 West Sts., Escalante, 13000127

WISCONSIN

Sheboygan County

SILVER LAKE (scow-schooner) Shipwreck, (Great Lakes Shipwreck Sites of Wisconsin MPS) 7 mi. NE. of Sheboygan in L. Michigan, Mosel, 13000128

[FR Doc. 2013–04974 Filed 3–4–13; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–12256; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before January 26, 2013. Pursuant to § 60.13 of 36 CFR Part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National

Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by March 20, 2013. 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: February 1, 2013.

Alexandra Lord,

Acting Chief, National Register of Historic Places/National Historic Landmarks Program.

ARKANSAS

Baxter County

Wolf Cemetery, Cty. Rd. 68, Norfork, 13000063

Faulkner County

University of Central Arkansas Historic District, 201 Donaghey Ave., Conway, 13000064

FLORIDA

Duval County

Snyder Memorial Methodist Episcopal Church, 226 N. Laura St., Jacksonville, 13000065

IOWA

Dubuque County

Cathedral Historic District (Boundary Increase) (Dubuque, Iowa MPS), Roughly bounded by 7th, Locust, 4th, Bissel, Jones, Bluff, Emmett & St. Mary's Sts., Dubuque, 13000066

Jones County

Booth, Edmund and Mary Ann Walworth, House, 125 S. Ford St., Anamosa, 13000067

Polk County

Greenwood Park Plats Historic District, Roughly 39th to 42nd Sts., approx. Grand Ave. to Center & Pleasant Sts., 4006, 4024 Grand Ave., Des Moines, 13000068

Poweshiek County

Farmers Mutual Reinsurance Company Building, 821 5th Ave., Grinnell, 13000069

Pioneer Oil Company Filling Station, 831 West St., Grinnell, 13000070

MISSOURI

Crawford County

Uptown Cuba Historic District (Cuba, Missouri MPS), Roughly W. Main Ave., N. & S. Smith & S. Hickory Sts., W. Washington Blvd., Cuba, 13000072

NEW YORK

Genesee County

Tyron, Augustus S., House, 15 Church St., Le Roy, 13000074

New York County

ENTERPRISE (space shuttle), Pier 86, W. 46th St. & 12th Ave., Manhattan, 13000071

Tompkins County

Beach Road Bridge, Beach Road across W. Branch of Cayuga Inlet, Newfield, 13000103

OKLAHOMA

Blaine County

Acre Family Barn, Rt. 2, Box 37, Canton, 13000073

Oklahoma County

Mummers Theater, 400 W. Sheridan Ave., Oklahoma City, 13000075

United Founders Life Tower, 5900 Mosteller Dr., Oklahoma City, 13000076

[FR Doc. 2013–04977 Filed 3–4–13; 8:45 am]

BILLING CODE 4312–51–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–872]

Certain Compact Fluorescent Reflector Lamps, Products Containing Same and Components Thereof; Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on January 28, 2013, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Andrzej Bobel of Lake Forest, Illinois and Neptun Light, Inc. of Lake Forest, Illinois. A letter supplementing the complaint was filed on February 15, 2013. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain compact fluorescent reflector lamps, products containing same and components thereof by reason of infringement of certain claims of U.S. Patent No. 7,053,540 (''the '540 patent''). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue an exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2012).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on February 27, 2013, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain compact fluorescent reflector lamps, products containing same and components thereof by reason of infringement of one or more of claims 1, 2, 10, and 11 of the '540 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

Andrzej Bobel, 640 Leland Court, Lake Forest, IL 60045.

Neptun Light, Inc., 13950 W. Business Center Drive, Lake Forest, IL 60045.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Maxlite, Inc., 12 York Avenue, West Caldwell, NJ 07006.

Technical Consumer Products, Inc., 325 Campus Drive, Aurora, OH 44202.

Satco Products, Inc., 110 Heartland Boulevard, Brentwood, NY 11717.

Litetronics International, Inc., 4101 W. 123rd Street, Alsip, IL 60803.

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

The Office of Unfair Import Investigations will not participate as a party in this investigation.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)–(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

Issued: February 27, 2013.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–04966 Filed 3–4–13; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

On February 25, 2013, the Department of Justice lodged a proposed Consent Decree (''CD'') with the United States District Court for the Northern District of Illinois, Eastern Division, in the lawsuit entitled *United States* v. *Geneva Energy, LLC,* Civil Action No. 13-cv-1448.

In this action, the United States, on behalf of the United States Environmental Protection Agency (''EPA''), sought civil penalties and injunctive relief, pursuant to Section 113(b) of the Clean Air Act (the ''CAA'' or ''Act''), 42 U.S.C. 7413(b), for violations related to a tire-burning electric generating plant in Ford Heights, Illinois (the ''Facility''). The CD resolves claims against Geneva Energy, LLC, (''Geneva Energy'') as former owner and operator of the Facility, and NAES, Inc., (''NAES'') a contract operator at the Facility for 14 months in 2008–2009. The claims are identified in the Complaint, which was also filed with the district court on February 25, 2013, and in EPA's Notice and Finding of Violation issued to Geneva Energy and NAES in 2010. The claims include allegations that Geneva Energy and NAES violated provisions of the Clean Air Act, including: (1) The New Source Performance Standards for Industrial Steam Generating Units; (2) the Illinois State Implementation Plan; and (3) numerous emissions limitations and operating requirements governed by the Facility's construction permit.

The CD requires Geneva Energy to: (1) Permanently shut down the Facility; (2) request that Illinois EPA withdraw all air and water permits and pending permit applications related to the Facility; and (3) surrender its sulfur dioxide emissions allowances. The CD does not require Geneva Energy to pay a civil penalty due to its inability to pay, as determined through a financial analysis. NAES will pay a civil penalty of $185,000.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Environmental Enforcement Section and should refer to *United States* v. *Geneva Energy, LLC,* D.J. Ref. No. 90–5–2–1–10155. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By e-mail ..	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, D.C. 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $8.00 (25 cents per page reproduction cost) payable to the United States Treasury.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2013–05017 Filed 3–4–13; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Resource Conservation and Recovery Act

On February 26, 2013, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Northern District of New York in the lawsuit entitled *United* States v. *Adirondack Energy Products, Inc., et al.,* Civil Action No. 11-cv-213 (TJM).

The settlement relates to eight retail gasoline service stations and/or petroleum bulk storage stations located in New York that are owned and operated by the Defendants. The Defendants include Adirondack Energy Products, Inc.; Mountain Mart #104, LLC; Mountain Mart #105, LLC; Mountain Mart #106, LLC; Mountain Mart #107, LLC; and Mountain Mart #108, LLC.

The proposed Consent Decree resolves claims of the United States under the Solid Waste Disposal Act, as amended by various laws including the Resource Conservation and Recovery Act related to the facilities that are the subject of the complaint. Under the proposed Consent Decree, the Defendants will pay a civil penalty in the amount of $46,000 to the United. In addition, the Consent Decree requires the installation of fully automated

electronic release detection monitoring equipment on the UST systems and associated piping owned and/or operated by Defendants at the facilities that are the subject of the Consent Decree. The Consent Decree includes three supplemental environmental projects requiring the Defendants to (1) Centralized monitoring equipment to collect the data generated by the electronic release detection system; (2) conduct a third-party environmental compliance audit of each facility; and (3) conduct a community outreach seminar to educate regulated UST owners and/or operators regarding the federal regulations that apply to the operation and maintenance of UST systems.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Adirondack Energy Products, Inc., et al.,* D.J. Ref. No. 90–7–1–09900. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By e-mail	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General U.S. DOJ—ENRD P.O. Box 7611 Washington, D.C. 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $12.25 (25 cents per page reproduction cost) payable to the United States Treasury.

Ronald G. Gluck,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2013–04968 Filed 3–4–13; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–82,189; TA–W–82,189A]

Verizon Business Networks Services, Inc., Senior Analysts-Order Management, Voice Over Internet Protocol, Small And Medium Business, Tampa, Florida; Verizon Business Networks Services, Inc., Senior Coordinator-Order Management, Voice Over Internet Protocol, Small And Medium Business, San Antonio, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 18, 2013, applicable to workers of Verizon Business Networks Services, Inc., Senior Analysts-Order Management, Voice Over Internet Protocol, Small and Medium Business, Tampa, Florida. The workers supplied order management services to small and medium business customers relating to the firm's Voice Over Internet Protocol (''VOIP'') products. The notice was published in the **Federal Register** on February 6, 2013 (78 FR 8592).

In response to new information received during the investigation of petition number TA–W–82,256, the Department reviewed this certification for workers of the subject firm. Information shows that the Senior Coordinator-Order Management, Voice Over Internet Protocol, Small and Medium Business of Verizon Business Networks Services, Inc., San Antonio, Texas operates the same as and in conjunction with Senior Analysts-Order Management, Voice Over Internet Protocol, Small and Medium Business Tampa, Florida, and both experienced worker separations during the relevant time period.

Based on these findings, the Department is amending this certification to include workers of the Senior Coordinator-Order Management, Voice Over Internet Protocol, Small and Medium Business of Verizon Business Networks Services, Inc., San Antonio, Texas.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by the shift in order management services to a foreign country.

The amended notice applicable to TA–W–82,189 is hereby issued as follows:

''All workers from Verizon Business Network Services, Inc., Senior Analysts-Order Management, Voice Over Internet Protocol, Small and Medium Business, Tampa, Florida (TA–W–82,189) and Verizon Business Network Services, Inc., Senior Coordinator-Order Management, Voice Over Internet Protocol, Small and Medium Business, San Antonio, Texas (TA–W–82,189A), who became totally or partially separated from employment on or after November 28, 2011 through January 18, 2015, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.''

Signed at Washington, DC this 14th day of February 2013.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2013–04951 Filed 3–4–13; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–81,702; TA–W–81,702A]

Verizon Business Networks Services, Inc., Specialist-Tech Customer Service, Philadelphia, PA; Verizon Business Networks Services, Inc., Specialist-Tech Customer Service, Tampa, Florida; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 6, 2012, applicable to workers of Verizon Business Networks Services, Inc., Order Management Division, Philadelphia, Pennsylvania and Verizon Business Networks Services, Inc., Order Management Division, Tampa, Florida. The workers' firm is engaged in activities related to telecommunications services. The worker group supplies order management services. The notice was published in the **Federal Register** on September 21, 2012 (77 FR 58583).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. New information from the company, shows that the correct name of the subject firm in its' entirety should

read Verizon Business Networks Services, Inc., Specialist-Tech Customer Service, Philadelphia, Pennsylvania and Verizon Business Networks Services, Inc., Specialist-Tech Customer Service, Tampa Florida.

Company information shows that the Specialist-Tech Customer Service is the intended worker group to be covered by this investigation. Therefore, as stated in the original certification, the Order Management Division is not included in this certification decision.

Accordingly, the Department is amended this certification to correct the name of the appropriate subdivision to read Verizon Business Networks Services, Inc., Specialist-Tech Customer Service, Philadelphia, Pennsylvania and Verizon Business Networks Service, Inc., Specialist-Tech Customer Service, Tampa, Florida.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by the shift in order management services to a foreign country.

The amended notice applicable to TA–W–81,702 and TA–W–81,702A are hereby issued as follows:

All workers from Verizon Business Network Services, Inc., Specialist-Tech Customer Service, Philadelphia, Pennsylvania (TA–W–81,702) and Verizon Business Network Services, Inc., Specialist-Tech Customer Service, Tampa, Florida (TA–W–81,702A), who became totally or partially separated from employment on or after June 8, 2011, through September 6, 2014, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC this 14th day of February 2013.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2013–04950 Filed 3–4–13; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 15, 2013.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 15, 2013.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC, this 20th day of February 2013.

Elliott S. Kushner,

Certifying Officer, Office of Trade Adjustment Assistance.

APPENDIX

[34 TAA Petitions instituted between 2/11/13 and 2/15/13]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
82437	W.W. Friedline Inc. (Company)	Somerset, PA	02/11/13	02/08/13
82438	Hatteras Yachts (Workers)	New Bern, NC	02/11/13	02/06/13
82439	StatSpin, Inc. d/b/a Iris Sample Processing (Company)	Westwood, MA	02/11/13	02/07/13
82440	Stone Age Interiors, Inc (Company)	Colorado Springs, CO	02/11/13	02/09/13
82441	OAI Electronics (Workers)	Tulsa, OK	02/11/13	02/08/13
82442	Deluxe Laboratories, Inc. (State/One-Stop)	Hollywood, CA	02/12/13	02/11/13
82443	NXP Semiconductors (Company)	San Jose, CA	02/12/13	02/11/13
82444	MacDermid Printing Solution (Company)	San Marcos, CA	02/12/13	02/11/13
82445	Mersen USA Newburyport MA LLC (Company)	Newburyport, MA	02/12/13	02/11/13
82446	Ohio Gravure Technologies (State/One-Stop)	Miamisburg, OH	02/12/13	02/11/13
82447	Yugo Mold (State/One-Stop)	Akron, OH	02/12/13	02/11/13
82448	Parker School Uniforms (State/One-Stop)	Houston, TX	02/12/13	02/11/13
82449	Volt Workforce Solutions (Company)	Woburn, MA	02/12/13	02/05/13
82450	HP Software (Company)	Palo Alto, CA	02/13/13	02/12/13
82451	Hewlett-Packard Enterprise Services (Company)	Palo Alto, CA	02/13/13	02/12/13
82452	HP Global Functions (Company)	Palo Alto, CA	02/13/13	02/12/13
82453	Dell Financial Services LLC, Operations Organization (State/One-Stop).	Round Rock, TX	02/13/13	02/12/13
82454	Laserwords, Inc (Workers)	Madison, WI	02/13/13	02/12/13
82455	First Advantage Corporation (Company)	St. Petersburg, FL	02/13/13	02/11/13
82456	NXP Semiconductors (Company)	Cary, NC	02/13/13	02/12/13
82457	Russell Brands LLC/Decorations (Company)	Alexander City, AL	02/13/13	02/12/13
82458	REC Silicon Inc. (State/One-Stop)	Moses Lake, WA	02/13/13	02/12/13
82459	Dow Chemical Company—Dow Electronic Materials (State/One-Stop).	Marlboro, MA	02/14/13	02/13/13
82460	Recycling and Treatment Technologies of Baltimore (State/One-Stop).	Sparrows Point, MD	02/14/13	02/13/13
82461	Tennessee Apparel Corporation (Company)	Waynesboro, TN	02/14/13	02/06/13

APPENDIX—Continued

[34 TAA Petitions instituted between 2/11/13 and 2/15/13]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
82462	Hydra Tec (State/One-Stop)	Baltimore, MD	02/14/13	02/13/13
82463	BP Solar (State/One-Stop)	Frederick, MD	02/14/13	02/13/13
82464	Scandura (Ohio), Inc. aka Fenner Dunlop (Workers)	Port Clinton, OH	02/14/13	02/12/13
82465	Kern-Liebers USA, Inc (Company)	Holland, OH	02/14/13	02/13/13
82466	Cinetech (State/One-Stop)	Valencia, CA	02/14/13	02/11/13
82467	Deltacraft Paper & Converting Co. (Workers)	Buffalo, NY	02/14/13	02/08/13
82468	LSI Corporation (Workers)	Allentown, PA	02/15/13	02/14/13
82469	Thermo Fisher Scientific (State/One-Stop)	Hudson, NH	02/15/13	01/12/13
82470	Citigroup (State/One-Stop)	New York, NY	02/15/13	02/14/13

[FR Doc. 2013–04949 Filed 3–4–13; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–82,285]

U.S. Steel Tubular Products, Inc., Mckeesport Tubular Operations Division, Subsidiary of United States Steel Corporation, Mckeesport, PA; Notice of Initiation of Investigation To Terminate Certification of Eligibility

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated in response to a petition for Trade Adjustment Assistance (TAA) filed on December 20, 2012 on behalf of workers of U.S. Steel Tubular Products, McKeesport Tubular Operations Division, Subsidiary of United States Steel Corporation, McKeesport, Pennsylvania (subject firm). The workers' firm produces steel drill pipe and drill collars.

On January 28, 2013, the Department issued a certification stating that the criteria set forth in Section 222(e) of the Trade Act of 1974, as amended, was met.

A review of the determination and the petition, however, revealed that the certification was erroneously issued. Specifically, the determination inaccurately stated that the petition was filed within a year of the March 3, 2011 publication in the **Federal Register** of the International Trade Commission's finding that dumping of drill pipes and drill collars from China negatively impacted U.S. firms engaged in production of those articles.

Although the subject firm was publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in a category of determination that is listed in Section 222(e) of the Act, 19 U.S.C. 2272(e), the petition was filed more than a year after the publication of the ITC's findings in the **Federal Register**.

The Department will conduct an investigation to determine whether or not the petitioning worker group has met the criteria set forth in Section 222(a) or (b) of the Trade Act of 1974, as amended, and will issue a determination accordingly.

Signed in Washington, DC, this 15th day of February, 2013.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2013–04948 Filed 3–4–13; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL SCIENCE FOUNDATION

Proposal Review; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces its intent to hold proposal review meetings throughout the year. The purpose of these meetings is to provide advice and recommendations concerning proposals submitted to the NSF for financial support. The agenda for each of these meetings is to review and evaluate proposals as part of the selection process for awards. The review and evaluation may also include assessment of the progress of awarded proposals. The majority of these meetings will take place at NSF, 4201 Wilson, Blvd., Arlington, Virginia 22230.

These meetings will be closed to the public. The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act. NSF will continue to review the agenda and merits of each meeting for overall compliance of the Federal Advisory Committee Act.

These closed proposal review meetings will not be announced on an individual basis in the **Federal Register**. NSF intends to publish a notice similar to this on a quarterly basis. For an advance listing of the closed proposal review meetings that include the names of the proposal review panel and the time, date, place, and any information on changes, corrections, or cancellations, please visit the NSF Web site: *http://www.nsf.gov/events/*. This information may also be requested by telephoning, 703/292–8182.

Dated: February 28, 2013.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2013–05002 Filed 3–4–13; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0310; Docket Nos. 50–445 and 50–446; License Nos. NPF–87 and NPF–89]

In the Matter of Luminant Generation Company LLC, Comanche Peak Nuclear Power Plant, Units 1 and 2; Order Approving the Proposed Internal Restructuring and Indirect Transfer of License

I

Luminant Generation Company LLC (Luminant, the licensee), is the holder of the Facility Operating License Nos. NPF–87 and NPF–89, which authorizes the possession, use, and operation of the Comanche Peak Nuclear Power Plant, Units 1 and 2 (CPNPP), and its Independent Spent Fuel Storage Installation Facility. CPNPP is located in Somervell County, Texas.

II

By application dated October 11, 2012, as supplemented by letters dated October 24, November 26, December 5,

and December 17, 2012, the licensee, acting on behalf of Energy Future Holdings Corporation (EFH), Energy Future Competitive Holdings Company (EFCH), Texas Competitive Electric Holdings Company LLC, and Luminant Holding Company LLC, the applicants, seek approval pursuant to 10 CFR 50.80 of the indirect transfer of control of CPNPP, Units 1 and 2, Facility Operating License Nos. NPF–87 and NPF–89, respectively. The transfer also involves the general license for CPNPP Independent Spent Fuel Storage Installation Facility.

EFCH is a direct, wholly owned subsidiary of EFH. EFCH, through its wholly owned subsidiaries, owns Luminant, the owner and operator of CPNPP. EFH is planning an internal transaction, the ultimate result of which is to convert EFCH from a Texas corporation into a Delaware limited liability corporation. Following the conversion, EFCH will remain a wholly owned subsidiary of EFH, and EFH will retain the same assets, liabilities, owners, board of directors, and management. There will be no change of control of EFH, EFCH, or Luminant as a result of this internal restructuring. No physical changes to the CPNPP facilities or operational changes are proposed.

The internal restructuring will be completed in several steps. EFH would form a new wholly owned subsidiary known as EFH2 corporation (EFH2), which would be a Texas corporation. EFH would then contribute its stock in EFCH to EFH2 causing EFCH to become a wholly owned subsidiary of EFH2. EFCH would then convert to a Delaware limited liability company by operation of applicable Texas and Delaware law. Finally, EFH would merge with and into EFH2 with EFH2 being the surviving entity, and EFH2 would change its name to Energy Future Holdings Corporation and adopt the current certificate of formation and bylaws of EFH.

Approval of the indirect transfer of the facility operating license was requested by Luminant. A notice entitled, AConsideration of Approval of Application Containing Sensitive Unclassified Non-Safeguards Information Regarding Proposed Energy Future Holdings Corporation Internal Restructuring,'' was published in the **Federal Register** on January 2, 2013 (78 FR 119), and a correction notice was published on January 10, 2013 (78 FR 2295). No comments or hearing requests were received. The supplemental letters dated November 26, December 5, and December 17, 2012, provided additional information that clarified the application and did not expand the scope of the application as originally noticed.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the U.S. Nuclear Regulatory Commission (NRC) shall give its consent in writing. Upon review of the information in the application as supplemented, and other information before the Commission, and relying upon the representations and agreements in the application, the NRC staff has determined that the proposed indirect transfer of control of the subject licenses held by the licensee to the extent such will result from the proposed internal restructuring, as described in the application, will not affect the qualifications of the licensee to hold the respective licenses and is otherwise consistent with the applicable provisions of law, regulations, and orders issued by the NRC, pursuant thereto, subject to the conditions set forth below. The findings set forth above are supported by a safety evaluation dated February 25, 2013.

III

Accordingly, pursuant to Sections 161b, 161i, 161.o, and 184 of the Atomic Energy Act of 1954, as amended (the Act), 42 U.S.C. 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, *it is hereby ordered* that the application regarding the proposed indirect license transfer is approved, subject to the following condition:

On October 10, 2007, Luminant Holding Company LLC, the immediate parent company of Luminant Power, provided Luminant Power with a support agreement in the amount of $250 million.

''*It is hereby ordered* that in connection with the proposed transaction, Luminant Holding Company LLC shall increase the amount available under this support agreement to $300 million, which provides a source of funding in an amount that is adequate to fund approximately one year's worth of the average projected expense for the fixed operations and maintenance (O&M) of CPNPP.''

It is further ordered that after receipt of all required regulatory approvals of the proposed indirect transfer action, Luminant shall inform the Director of the Office of Nuclear Reactor Regulation in writing of such receipt no later than 5 business days prior to the date of the closing of the indirect transfer. Should the proposed indirect transfer not be completed within 1 year from the date of this Order, this Order shall become null and void, provided, however, upon written application and good cause shown, such date may be extended by Order.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated October 11, 2012 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML12312A157), as supplemented by letters dated October 24, November 26, December 5, and December 17, 2012 (ADAMS Accession Nos. ML12312A071, ML12340A446, ML12354A058, and ML12363A028, respectively), and the safety evaluation dated February 22, 2013, which are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by email to *pdr.resource@nrc.gov*.

Dated at Rockville, Maryland this 22nd day of February 2013.

For the Nuclear Regulatory Commission.

Michele G. Evans,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2013–05021 Filed 3–4–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–327, 50–328; NRC–2013–0037]

Tennessee Valley Authority; Notice of Acceptance for Docketing of Application and Notice of Opportunity for Hearing Regarding Renewal of Sequoyah Nuclear Plant, Units 1 and 2 Facility Operating License Nos. DPR–77, DPR–79 for an Additional 20-Year Period

The U.S. Nuclear Regulatory Commission (NRC) is considering an application for the renewal of operating licenses DPR–77 and DPR–79, which authorizes Tennessee Valley Authority (TVA), to operate the Sequoyah Nuclear Plant (SQN) Unit 1 at 3455 megawatts thermal and Unit 2 at 3455 megawatts thermal. The renewed licenses would authorize the applicant to operate SQN, Units 1 and 2, for an additional 20 years beyond the period specified in the

current licenses. SQN Units 1 and 2 are located in Soddy-Daisy, TN; the current operating license for Unit 1 expires on September 17, 2020, and Unit 2 expires on September 15, 2021.

TVA submitted the application dated January 7, 2013, pursuant to part 54 of Title 10 of the *Code of Federal Regulations* (10 CFR), to renew operating licenses DPR–77 and DPR–79. A notice of receipt and availability of the license renewal application (LRA) was published in the **Federal Register** on February 22, 2013 (78 FR 12365).

The Commission's staff has determined that TVA has submitted sufficient information in accordance with 10 CFR 54.19, 54.21, 54.22, 54.23, 51.45, and 51.53(c), to enable the staff to undertake a review of the application, and that the application is therefore acceptable for docketing. The current Docket Numbers, 50–327 and 50–328, for operating license numbers DPR–77, DPR–79, respectively, will be retained. The determination to accept the LRA for docketing does not constitute a determination that a renewed license should be issued, and does not preclude the NRC staff from requesting additional information as the review proceeds.

Before issuance of the requested renewed licenses, the NRC will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. In accordance with 10 CFR 54.29, the NRC may issue a renewed license on the basis of its review if it finds that actions have been identified and have been or will be taken with respect to: (1) Managing the effects of aging during the period of extended operation on the functionality of structures and components that have been identified as requiring aging management review, and (2) time-limited aging analyses that have been identified as requiring review, such that there is reasonable assurance that the activities authorized by the renewed license will continue to be conducted in accordance with the current licensing basis (CLB) and that any changes made to the plant's CLB will comply with the Act and the Commission's regulations.

Additionally, in accordance with 10 CFR 51.95(c), the NRC will prepare an environmental impact statement that is a supplement to the Commission's NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants,'' dated May 1996. In considering the LRA, the Commission must find that the applicable requirements of Subpart A of 10 CFR part 51 have been satisfied, and that matters raised under 10 CFR 2.335 have been addressed. Pursuant to 10 CFR 51.26, and as part of the environmental scoping process, the staff intends to hold a public scoping meeting. Detailed information regarding the environmental scoping meeting will be the subject of a separate **Federal Register** notice.

Within 60 days after the date of publication of this **Federal Register** notice, any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene with respect to the renewal of the license. Requests for a hearing or petitions for leave to intervene must be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852 and is accessible from the NRC's Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html. http://www.nrc.gov/readingrm/adams.html* Persons who do not have access to the Internet or who encounter problems in accessing the documents located in ADAMS should contact the NRC's PDR reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by email at *PDR.Resource@nrc.gov.* If a request for a hearing/petition for leave to intervene is filed within the 60-day period, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel will issue a notice of a hearing or an appropriate order. In the event that no request for a hearing or petition for leave to intervene is filed within the 60-day period, the NRC may, upon completion of its evaluations and upon making the findings required parts 51 and 54 of Title 10 of the *Code of Federal Regulations* (10 CFR), renew the license without further notice.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding, taking into consideration the limited scope of matters that may be considered pursuant to 10 CFR parts 51 and 54. The petition must specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the basis for each contention and a concise statement of the alleged facts or the expert opinion that supports the contention on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the requestor/petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The requestor/petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.[1] Contentions shall be limited to matters within the scope of the action under consideration. The contention must be one that, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Petitions filed after the deadline, amended petitions, and supplemental petitions will not be entertained absent a determination by the Commission, the Atomic Safety and Licensing Board Panel or a Presiding Officer that the petition should be granted and/or the contentions should be admitted based upon a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

A State, county, municipality, Federally-recognized Indian Tribe, or agencies thereof, may submit a petition to the Commission to participate as a

[1] To the extent that the application contains attachments and supporting documents that are not publicly available because they are asserted to contain safeguards or proprietary information, petitioners desiring access to this information should contact the applicant or applicant's counsel to discuss the need for a protective order.

party under 10 CFR 2.309(d)(2). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by May 6, 2013. The petition must be filed in accordance with the filing instructions in section IV of this document, and should meet the requirements for petitions for leave to intervene set forth in this section, except that State and Federally-recognized Indian tribes do not need to address the standing requirements in 10 CFR 2.309(d)(1) if the facility is located within its boundaries. The entities listed above could also seek to participate in a hearing as a nonparty pursuant to 10 CFR 2.315(c).

Any person who does not wish, or is not qualified, to become a party to this proceeding may request permission to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to such limits and conditions as may be imposed by the Atomic Safety and Licensing Board. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission by May 6, 2013.

The Commission requests that each contention be given a separate numeric or alpha designation within one of the following groups: (1) Technical (primarily related to safety concerns); (2) environmental; or (3) miscellaneous.

As specified in 10 CFR 2.309, if two or more requestors/petitioners seek to co-sponsor a contention or propose substantially the same contention, the requestors/petitioners will be required to jointly designate a representative who shall have the authority to act for the requestors/petitioners with respect to that contention.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call to 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) Frst class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or

by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Detailed information about the license renewal process can be found under the Nuclear Reactors icon at *http://www.nrc.gov/reactors/operating/licensing/renewal.html* on the NRC's Web site. Copies of the application to renew the operating license for SQN are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852–2738, and at *http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html,* the NRC's Web site while the application is under review. The application may be accessed in ADAMS through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html* under ADAMS Accession Number ML130240007. As stated above, persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS may contact the NRC PDR reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by email to *PDR.Resource@nrc.gov*.

Petitions filed after the deadline, amended petitions, and supplemental petitions will not be entertained absent a determination by the Commission, the Atomic Safety and Licensing Board Panel or a Presiding Officer that the petition should be granted and/or the contentions should be admitted based upon a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

The NRC staff has verified that a copy of the license renewal application is also available to local residents near SQN, at the Chattanooga-Hamilton County Library—Northgate Branch, 520 Northgate Mall, Chattanooga, TN 37415; the Chattanooga-Hamilton County Library—Downtown Branch, 1001 Broad St., Chattanooga, TN 37402; and the Signal Mountain Library, 1114 James Blvd., Signal Mountain, TN 37377.

Dated at Rockville, Maryland, this 25th day of February, 2013.

For the Nuclear Regulatory Commission.

John W. Lubinski,

Director, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 2013–05020 Filed 3–4–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2013–0001]

Sunshine Act Meetings

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATES: Weeks of March 4, 11, 18, 25, April 1, 8, 2013.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of March 4, 2013

There are no meetings scheduled for the week of March 4, 2013.

Week of March 11, 2013—Tentative

Monday, March 11, 2013

9:15 a.m. Affirmation Session (Public Meeting) (Tentative)
Calvert Cliffs 3 Nuclear Project, LLC & UniStar Nuclear Operating Services, LLC (Calvert Cliffs Nuclear Power Plant, Unit 3), Docket No. 52–016–COL, Petition for Review of LBP–12–19 (Tentative)

Week of March 18, 2013—Tentative

There are no meetings scheduled for the week of March 18, 2013.

Week of March 25, 2013—Tentative

There are no meetings scheduled for the week of March 25, 2013.

Week of April 1, 2013—Tentative

Tuesday April 2, 2013

9:30 a.m. Meeting with Organization of Agreement States (OAS) and Conference of Radiation Control Program Directors (CRCPD) (Public Meeting) (Contact: Cindy Flannery, 301–415–0223).

This meeting will be Web cast live at the Web address—*www.nrc.gov*

Week of April 8, 2013—Tentative

There are no meetings scheduled for the week of April 8, 2013.

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* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—301–415–1292. Contact person for more information: Rochelle Bavol, 301–415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html*.

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301–287–0727, or by email at *kimberly.meyer-chambers@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an email to *darlene.wright@nrc.gov*.

Dated: February 28, 2013.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2013–05171 Filed 3–1–13; 4:15 pm]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act Meetings; Board of Directors Meeting

TIME AND DATE: Thursday, March 21, 2013, 10 a.m. (Open Portion) 10:15 a.m. (Closed Portion).

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue NW., Washington, DC.

STATUS: Meeting Open to the Public from 10 a.m. to 10:15 a.m. Closed

portion will commence at 10:15 a.m. (approx.).

MATTERS TO BE CONSIDERED:

1. President's Report.
2. Tribute—Kevin G. Nealer.
3. Confirmation—Katherine M. Gehl as Member, Board Audit Committee.
4. Confirmation—Rita Moss as Vice President, Human Resources.
5. Minutes of the Open Session of the December 6, 2012 Board of Directors Meeting.

FURTHER MATTERS TO BE CONSIDERED (CLOSED TO THE PUBLIC 10:15 A.M.):

1. Finance Project—Peru.
2. Finance Project—Pakistan.
3. Finance Project—Guatemala.
4. Finance Project—Latin America.
5. Minutes of the Closed Session of the December 6, 2012 Board of Directors Meeting.
6. Reports.
7. Pending Major Projects.

Written summaries of the projects to be presented will be posted on OPIC's web site on or about March 1, 2013.

CONTACT PERSON FOR INFORMATION: Information on the meeting may be obtained from Connie M. Downs at (202) 336–8438.

Dated: March 1, 2013.

Connie M. Downs,

Corporate Secretary, Overseas Private Investment Corporation.

[FR Doc. 2013–05182 Filed 3–1–13; 4:15 pm]

BILLING CODE 3210–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30410; 812–14077]

Triangle Capital Corporation; Notice of Application

February 28, 2013.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application to amend a prior order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for exemptions from sections 23(a), 23(b) and 63 of the Act, and under sections 57(a)(4) and 57(i) of the Act and rule 17d–1 under the Act authorizing certain joint transactions otherwise prohibited by section 57(a)(4) of the Act.

Summary of the Application: Triangle Capital Corporation (''Triangle'') requests an order (''Amended Order'') that would amend a prior order to increase the amount of Restricted Stock, as defined below, issued annually to each non-employee director.

Filing Dates: The application was filed on September 14, 2012, and amended on November 30, 2012, Febuary 21, 2013 and February 27, 2013.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 20, 2013, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicant, 3700 Glenwood Avenue, Suite 530, Raleigh, NC 27612.

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Special Counsel, at (202) 551–6813, or Mary Kay Frech, 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 for an applicant using the ''Company'' name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicant's Representations

1. Triangle is an internally managed, closed-end investment company that has elected to be regulated as a business development company (''BDC'') under section 54(a) of the Act. On March 18, 2008, Triangle received an order (the ''Prior Order'') [1] permitting it to issue shares of restricted common stock (''Restricted Stock'') to its employees, employees of its wholly-owned consolidated subsidiaries, and its non-employee directors pursuant to its Amended and Restated 2007 Equity Incentive Plan (the ''Amended and Restated Plan'').[2] Under the Prior Order, Triangle's non-employee directors each receive an automatic grant of $30,000 worth of Restricted Stock at the beginning of each one-year term of service on Triangle's board of directors (the ''Board'').

2. Triangle states that subsequent to the Prior Order, it has increased its operations while continuing its effort to hire and retain qualified directors for the Board. In order to accomplish its goal of hiring and retaining qualified directors for its Board, Triangle believes that it is in the best interests of Triangle and its stockholders to increase the number of shares of Restricted Stock issued to non-employee directors under the Amended and Restated Plan to appropriately compensate the non-employee directors for their services in proportion to Triangle's growth. Therefore, Triangle proposes to amend the Amended and Restated Plan to allow each non-employee director to receive an annual grant of $50,000 worth of Restricted Stock.

3. In addition, the amended order would revise condition 3 to clarify that the term ''outstanding voting securities'' does not include Restricted Stock and make certain technical changes to the Amended and Restated Plan, as described in the application.

Applicant's Legal Analysis

4. Section 6(c) provides, in part, that the Commission may, by order upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class or classes thereof, from any provision of the Act or of any rule or regulation under the Act, if and to the extent that 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.

5. Section 57(a)(4) and rule 17d–1 provide that the Commission may, by order upon application, grant relief under section 57(a)(4) and rule 17d–1 permitting certain joint enterprises or arrangements and profit-sharing plans. Rule 17d–1(b) further provides that in passing upon such an application, the Commission will consider whether the participation of the BDC in such enterprise, arrangement, or plan is consistent with the provision, policies and purposes of the Act and the extent to which such participation is on a basis

[1] Triangle Capital Corporation, Investment Company Act Release Nos. 28165 (Feb. 20, 2008) (notice) and 28196 (Mar. 18, 2008) (order), *as amended by* Triangle Capital Corporation, Investment Company Act Release Nos. 28692 (Apr. 13, 2009) (notice) and 28718 (May 5, 2009) (order).

[2] ''Restricted Stock'' means shares of Triangle's common stock that, at the time of issuance, are subject to forfeiture restrictions, and thus are restricted as to their transferability until such forfeiture restrictions have lapsed.

different from or less advantageous than that of other participants.

6. Applicant states that with respect to the relief granted in the Prior Order under section 6(c), the Amended Order remains 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. Applicant states that with respect to the relief granted in the Prior Order under section 57(a)(4) and rule 17d–1, the participation by Triangle under the Amended Order remains consistent with the provisions, policies and purposes of the Act and that Triangle's participation will not be less advantageous than that of the other participants.

Applicant's Conditions

Applicant agrees that the Amended Order will be subject to the same conditions as those imposed by the Prior Order, except that condition 3 is revised in its entirety as follows:

The amount of voting securities that would result from the exercise of all of Triangle's outstanding warrants, options, and rights, together with any Restricted Stock issued pursuant to the Amended and Restated Plan, at the time of issuance shall not exceed 25% of the outstanding voting securities of Triangle, except that if the amount of voting securities that would result from the exercise of all of Triangle's outstanding warrants, options, and rights issued to Triangle's directors, officers, and employees, together with any Restricted Stock issued pursuant to the Amended and Restated Plan, would exceed 15% of the outstanding voting securities of Triangle, then the total amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights, together with any Restricted Stock issued pursuant to the Amended and Restated Plan, at the time of issuance shall not exceed 20% of the outstanding voting securities of Triangle.[3]

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–05026 Filed 3–4–13; 8:45 am]

BILLING CODE 8011–01–P

[3] For the purposes of this condition, ''outstanding voting securities'' does not include Restricted Stock.

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30409; File No. 812–14125]

Market Vectors ETF Trust, et al.; Notice of Application

February 27, 2013.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.

SUMMARY: Applicants request an order that would permit (a) certain open-end management investment companies or series thereof to issue shares (''Shares'') redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Shares to occur at negotiated market prices; (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days after the tender of Shares for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares; and (f) certain series to perform creations and redemptions of Shares in-kind in a master-feeder structure.

Applicants: Market Vectors ETF Trust (the ''Trust''), Van Eck Associates Corporation (the ''Adviser''), and Van Eck Securities Corporation (the ''Distributor'').

DATES: The application was filed on February 22, 2013. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

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 March 20, 2013, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549; Applicants, 335 Madison Avenue, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: Mark N. Zaruba, Senior Counsel at (202) 551–6878, or David P. Bartels, 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 Trust is registered under the Act as an open-end management investment company and is organized as a Delaware statutory trust. In reliance on the requested order, the Trust will offer one or more series (each a ''Fund,'' and, collectively, the ''Funds''),[1] each of which will seek to provide investment returns that correspond, before fees and expenses, generally to the performance of a specified equity and/or a fixed income securities index that either: (i) includes both long and short positions in securities (''Long/Short Index''); or (ii) uses a 130/30 investment strategy (''130/30 Index'' and, collectively with the Long/Short Indexes, ''Underlying Indexes'').

2. Applicants represent that the Trust intends initially to offer the Fund identified in the application (''Current Fund''), whose investment objective will be to seek to replicate as closely as possible, before fees and expenses, the price and yield performance of the Market Vectors® U.S. Treasury-Hedged High Yield Bond Index, a Long/Short Index developed by Market Vectors Index Solutions GmbH, a wholly owned

[1] In addition to the Current Fund, the Trust includes series that rely on prior ETF exemptive relief granted by the Commission. The Funds will not rely on this prior exemptive relief, and ETFs relying on this prior relief will not rely on the relief requested in this application.

subsidiary of the Adviser. The Current Fund's Underlying Index is described in Appendix A to the application.

3. Applicants request that the order apply to the Current Fund and any additional series of the Trust [2] and any other open-end management investment company or series thereof that may be created in the future (''Future Funds'') and that tracks an Underlying Index.[3] Any Future Fund will be (a) advised by the Adviser, or an entity controlling, controlled by, or common control with the Adviser (included in the term ''Adviser'') and (b) comply with the terms and conditions of the application. For purposes of this notice, references to ''Funds'' include the Current Fund, as well as any Future Funds.

4. Certain of the Funds will be based on Underlying Indexes which will be comprised of equity and/or fixed income securities issued by domestic issuers or non-domestic issuers meeting the requirements for trading in U.S. markets. Other Funds will be based on Underlying Indexes which will be comprised of foreign and domestic or solely foreign equity and/or fixed income securities.

5. An Adviser registered as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act'') will serve as investment adviser to the Funds. The Adviser may enter into sub-advisory agreements with one or more investment advisers to act as a sub-adviser to a Fund (each, a ''Sub-Adviser''). Each Sub-Adviser will be registered or not subject to registration under the Advisers Act. The Distributor is a broker-dealer registered under the Securities Exchange Act of 1934 (the ''Exchange Act'') and will act as the principal underwriter and distributor for the Funds.[4]

6. A Fund may operate as a feeder fund in a master-feeder structure (''Feeder Fund''). Applicants request that the order permit the Feeder Funds to acquire securities of another registered investment company managed by the Adviser having substantially the same investment objectives as the Feeder Fund (''Master Fund'') beyond the limitation in section 12(d)(1)(A) and permit the Master Funds, and any principal underwriter for the Master Fund, to sell shares of the Master Funds to the Feeder Funds beyond the limitations in section 12(d)(1)(B) (''Master-Feeder Relief''). Applicants may structure certain Feeder Funds to generate economies of scale and incur lower overhead costs.[5] There would be no ability by Fund shareholders to exchange Shares of Feeder Funds for shares of another feeder series of the Master Fund.

7. Each Fund will hold certain securities and other instruments (''Portfolio Securities'') selected to correspond to the performance of its Underlying Index.[6] Except with respect to Affiliated Index Funds (defined below), no entity that creates, compiles, sponsors or maintains an Underlying Index (''Index Provider'') will be an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of the Trust, a Fund, the Adviser, any Sub-adviser, or promoter of a Fund, or of the Distributor.

8. A Fund will utilize either a replication or representative sampling strategy to track its Underlying Index. A Fund using a replication strategy will invest in substantially all of the Component Securities in its Underlying Index in the same approximate proportions as in the Underlying Index. A Fund using a representative sampling strategy will hold some, but may not hold all, of the Component Securities of its Underlying Index. Applicants state that use of the representative sampling strategy may prevent a Fund from tracking the performance of its Underlying Index with the same degree of accuracy as would a Fund that invests in every Component Security of the Underlying Index. Applicants expect that each Fund will have an annual tracking error relative to the performance of its Underlying Index of less than 5 percent.

9. Each Fund will issue, on a continuous basis, Creation Units, which will typically consist of at least 25,000 Shares and have an initial price per Share of $25 to $100. All orders to purchase Creation Units must be placed with the Distributor by or through a party that has entered into an agreement with the Distributor (''Authorized Participant''). The Distributor will be responsible for delivering the Fund's prospectus to those persons acquiring Creation Units and for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it. In addition, the Distributor will maintain a record of the instructions given to the applicable Fund to implement the delivery of its Shares. An Authorized Participant must be either (a) a ''Participating Party,'' (*i.e.,* a broker-dealer or other participant in the Continuous Net Settlement System of the National Securities Clearing Corporation (''NSCC''), a clearing house registered with the Commission, or (b) a participant in the Depository Trust Company (''DTC,'' and such participant, ''DTC Participant''), which, in either case, has signed a ''Participant Agreement'' with the Distributor.

10. The Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified below, purchasers will be required to purchase Creation Units by making an in-kind deposit of specified instruments (''Deposit Instruments''), and shareholders redeeming their Shares will receive an in-kind transfer of specified instruments (''Redemption Instruments'').[7] On any given Business Day the names and quantities of the instruments that constitute the Deposit Instruments and the names and quantities of the instruments that constitute the Redemption Instruments will be identical, unless the Fund is Rebalancing (as defined below). In addition, the Deposit Instruments and

[2] This includes any existing ETF (defined below) of the Trust currently relying on the prior ETF exemptive relief that becomes a Fund. As discussed in footnote 1, any such ETF will be subject to the terms and conditions of the requested order and will no longer be permitted to rely on the prior relief.

[3] All entities that currently intend to rely on the order have been named as applicants. Any other existing or future entity that subsequently relies on the order will comply with the terms and conditions of the application. A Fund of Funds (as defined below) may rely on the order only to invest in Funds and not in any other registered investment company.

[4] Applicants request that the order also apply to future distributors that comply with the terms and conditions of the application.

[5] Operating in a master-feeder structure could also impose costs on a Feeder Fund and reduce its tax efficiency. The Feeder Fund's Board will weigh the potential disadvantages against the benefits of economies of scale and other benefits of operating within a master-feeder structure. In a master-feeder structure, the Master Fund—rather than the Feeder Fund—would generally invest the portfolio in compliance with the Order.

[6] Applicants represent that each Fund will invest at least 80% of its total assets in the component securities that comprise its Underlying Index (''Component Securities'') or, as applicable, depositary receipts or TBA Transactions (as defined below) representing Component Securities. Each Fund also may invest up to 20% of its total assets (the ''20% Asset Basket'') in a broad variety of other instruments, including securities not included in its Underlying Index, which the Adviser believes will help the Fund track its Underlying Index.

[7] The Funds must comply with the federal securities laws in accepting Deposit Instruments and satisfying redemptions with Redemption Instruments, including that the Deposit Instruments and Redemption Instruments are sold in transactions that would be exempt from registration under the Securities Act of 1933 (''Securities Act''). In accepting Deposit Instruments and satisfying redemptions with Redemption Instruments that are restricted securities eligible for resale pursuant to Rule 144A under the Securities Act, the Funds will comply with the conditions of Rule 144A.

the Redemption Instruments will each correspond pro rata to the positions in a Fund's portfolio (including cash positions),[8] except: (a) in the case of bonds, for minor differences when it is impossible to break up bonds beyond certain minimum sizes needed for transfer and settlement; (b) for minor differences when rounding is necessary to eliminate fractional shares or lots that are not tradeable round lots;[9] (c) ''to be announced'' transactions (''TBA Transactions''),[10] short positions, derivatives and other positions that cannot be transferred in kind[11] will be excluded from the Deposit Instruments and the Redemption Instruments;[12] (d) to the extent the Fund determines, on a given Business Day, to use a representative sampling of the Fund's portfolio;[13] or (e) for temporary periods, to effect changes in the Fund's portfolio as a result of the rebalancing of its Underlying Index (any such change, a ''Rebalancing''). If there is a difference between the net asset value (''NAV'') attributable to a Creation Unit and the aggregate market value of the Deposit Instruments or Redemption Instruments exchanged for the Creation Unit, the party conveying instruments with the lower value will also pay to the other an amount in cash equal to that difference (the ''Balancing Amount'').

11. Purchases and redemptions of Creation Units may be made in whole or in part on a cash basis, rather than in kind, solely under the following circumstances: (a) to the extent there is a Balancing Amount, as described above; (b) if, on a given Business Day, a Fund announces before the open of trading that all purchases, all redemptions or all purchases and redemptions on that day will be made entirely in cash; (c) if, upon receiving a purchase or redemption order from an Authorized Participant, a Fund determines to require the purchase or redemption, as applicable, to be made entirely in cash;[14] (d) if, on a given Business Day, a Fund requires all Authorized Participants purchasing or redeeming Shares on that day to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are not eligible for transfer through either the NSCC or DTC; or (ii) in the case of Foreign Funds, such instruments are not eligible for trading due to local trading restrictions, local restrictions on securities transfers or other similar circumstances; or (e) if a Fund permits an Authorized Participant to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are, in the case of the purchase of a Creation Unit, not available in sufficient quantity; (ii) such instruments are not eligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting; or (iii) a holder of Shares of a Foreign Fund would be subject to unfavorable income tax treatment if the holder receives redemption proceeds in kind.[15]

12. Each Business Day, before the open of trading on a national securities exchange, as defined in section 2(a)(26) of the Act (''Exchange'') on which Shares are listed (''Listing Exchange''), each Fund will cause to be published through the NSCC the names and quantities of the instruments comprising the Deposit Instruments and the Redemption Instruments, as well as the estimated Balancing Amount (if any), for that day. The list of Deposit Instruments and the list of Redemption Instruments will apply until new lists are announced on the following Business Day, and there will be no intra-day changes to the lists except to correct errors in the published lists.

13. The Adviser will provide full portfolio holdings disclosure on a daily basis on the Funds' publicly available Web site (''Web site'') and will develop an ''IIV File,'' which it will use to disclose the Funds' full portfolio holdings, including short positions. Before the opening of business on each Business Day, the Trust, Adviser or other third party, will make the IIV File available by email upon request. Applicants state that given either the IIV File or the Web site disclosure,[16] anyone will be able to know in real time the intraday value of the Funds.[17] The investment characteristics of any financial instruments and short positions used to achieve short and long exposures will be described in sufficient detail for market participants to understand the principal investment strategies of the Funds and to permit informed trading of their Shares.

14. Shares of each Fund will be listed and traded individually on an Exchange. It is expected that one or more member firms of an Exchange will be designated to act as a market maker (''Market Maker'') and maintain a market in Shares trading on the Exchange. Prices of Shares trading on an Exchange will be based on the current bid/ask market. Shares sold in the secondary market will be subject to customary brokerage commissions and charges.

15. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs. Market Makers also may purchase Creation Units for use in market-making activities. Applicants expect that secondary market purchasers of Shares will include both institutional investors and retail investors.[18] Applicants expect

[8] The portfolio used for this purpose will be the same portfolio used to calculate the Fund's NAV for that Business Day.

[9] A tradeable round lot for a security will be the standard unit of trading in that particular type of security in its primary market.

[10] A TBA Transaction is a method of trading mortgage-backed securities. In a TBA Transaction, the buyer and seller agree on general trade parameters such as agency, settlement date, par amount and price. The actual pools delivered generally are determined two days prior to the settlement date.

[11] This includes instruments that can be transferred in kind only with the consent of the original counterparty to the extent the Fund does not intend to seek such consents.

[12] Because these instruments will be excluded from the Deposit Instruments and the Redemption Instruments, their value will be reflected in the determination of the Balancing Amount (defined below).

[13] A Fund may only use sampling for this purpose if the sample: (a) is designed to generate performance that is highly correlated to the performance of the Fund's portfolio; (b) consists entirely of instruments that are already included in the Fund's portfolio; and (c) is the same for all Authorized Participants on a given Business Day.

[14] In determining whether a particular Fund will sell or redeem Creation Units entirely on a cash or in-kind basis (whether for a given day or a given order), the key consideration will be the benefit that would accrue to the Fund and its investors. For instance, in bond transactions, the Adviser may be able to obtain better execution than Share purchasers because of the Adviser's or Sub-adviser's size, experience and potentially stronger relationships in the fixed income markets. Purchases of Creation Units either on an all cash basis or in-kind are expected to be neutral to the Funds from a tax perspective. In contrast, cash redemptions typically require selling portfolio holdings, which may result in adverse tax consequences for the remaining Fund shareholders that would not occur with an in-kind redemption. As a result, tax considerations may warrant in-kind redemptions.

[15] A ''custom order'' is any purchase or redemption of Shares made in whole or in part on a cash basis in reliance on clause (e)(i) or (e)(ii).

[16] The information on the Web site will be the same as that disclosed to Authorized Participants in the IIV File, except that (a) the information provided on the Web site will be formatted to be reader-friendly and (b) the portfolio holdings data on the Web site will be calculated and displayed on a per Fund basis, while the information in the IIV File will be calculated and displayed on a per Creation Unit basis.

[17] Each Listing Exchange or other major market data provider will disseminate, every 15 seconds during regular Exchange trading hours, through the facilities of the Consolidated Tape Association, an amount for each Fund representing the sum of (a) the estimated Balancing Amount and (b) the current value of the Deposit Instruments and any short positions, on a per individual Share basis.

[18] Shares will be registered in book-entry form only. DTC or its nominee will be the registered owner of all outstanding Shares. DTC or DTC

Continued

that the price at which Shares trade will be disciplined by arbitrage opportunities created by the option to continually purchase or redeem Creation Units at their NAV, which should ensure that Shares will not trade at a material discount or premium in relation to their NAV.

16. Shares will not be individually redeemable. To redeem, an investor must accumulate enough Shares to constitute a Creation Unit. Redemption orders must be placed by or through an Authorized Participant.

17. An investor purchasing or redeeming a Creation Unit from a Fund may be charged a fee (''Transaction Fee'') to protect existing shareholders of the Funds from the dilutive costs associated with the purchase and redemption of Creation Units.[19] With respect to Feeder Funds, the Transaction Fee would be paid indirectly to the Master Fund.[20]

18. Neither the Trust nor any Fund will be advertised, marketed or otherwise held out as a traditional open-end investment company or a mutual fund. Instead, each Fund will be marketed as an ''exchange traded fund (''ETF''). All marketing materials that describe the features or method of obtaining, buying or selling Creation Units, or Shares traded on an Exchange, or refer to redeemability, will prominently disclose that Shares are not individually redeemable and that the owners of Shares may purchase or redeem Shares from the Fund in Creation Units. The same approach will be followed in the shareholder reports issued or circulated in connection with the Shares. The Funds will provide copies of their annual and semi-annual shareholder reports to DTC Participants for distribution to shareholders.

19. Applicants also request that the order allow them to offer Funds for which an affiliated person of the Adviser will serve as the Index Provider (''Affiliated Index Fund''). The Index Provider to an Affiliated Index Fund (''Affiliated Index Provider'') will create a proprietary, rules based methodology (''Rules-Based Process'') to create Underlying Indexes for use by the Affiliated Index Funds and other investors (an ''Affiliated Index'').[21] The Affiliated Index Provider, as owner of the Underlying Indexes and all related intellectual property related thereto, will license the use of the Affiliated Indexes, their names and other related intellectual property to the Adviser for use in connection with the Affiliated Index Funds, or their respective Master Funds. The licenses for the Affiliated Index Funds, or their respective Master Funds will state that the Adviser must provide the use of the Affiliated Indexes and related intellectual property at no cost to the Trust and the Affiliated Index Funds, or their respective Master Funds.

20. Applicants contend that the potential conflicts of interest arising from the fact that the Affiliated Index Provider will be an ''affiliated person'' of the Adviser will not have any impact on the operation of the Affiliated Index Funds because the Affiliated Indexes will maintain transparency, the Affiliated Index Funds' portfolios will be transparent, and the Affiliated Index Provider, the Adviser, any Sub-Adviser and the Affiliated Index Funds each will adopt policies and procedures to address any potential conflicts of interest (''Policies and Procedures''). The Affiliated Index Provider will publish in the public domain, including on its Web site and/or the Affiliated Index Funds' Web site, all of the rules that govern the construction and maintenance of each of its Affiliated Indexes. Applicants believe that this public disclosure will prevent the Adviser from possessing any advantage over other market participants by virtue of its affiliation with the Affiliated Index Provider, the owner of the Affiliated Indexes. Applicants note that the identity and weightings of the securities of any Affiliated Index will be readily ascertainable by any third party because the Rules-Based Process will be publicly available.

21. Like other index providers, the Affiliated Index Provider may modify the Rules-Based Process in the future. The Rules-Based Process could be modified, for example, to reflect changes in the underlying market tracked by an Affiliated Index, the way in which the Rules-Based Process takes into account market events or to change the way a corporate action, such as a stock split, is handled. Such changes would not take effect until the Index Personnel (defined below) has given (a) the Calculation Agent (defined below) reasonable prior written notice of such rule changes, and (b) the investing public at least sixty (60) days published notice that such changes will be implemented. Affiliated Indexes may have reconstitution dates and rebalance dates that occur on a periodic basis more frequently than once yearly, but no more frequently than monthly.

22. As owner of the Affiliated Indexes, the Affiliated Index Provider will hire a calculation agent (''Calculation Agent''). The Calculation Agent will determine the number, type, and weight of securities that will comprise each Affiliated Index, will perform all other calculations necessary to determine the proper make-up of the Affiliated Index, including the reconstitutions for such Affiliated Index, and will be solely responsible for all such Affiliated Index maintenance, calculation, dissemination and reconstitution activities. The Calculation Agent will not be an affiliated person, as such term is defined in the Act, or an affiliated person of an affiliated person, of the Funds, or their respective Master Funds, the Adviser, any Sub-Adviser, any promoter of a Fund or the Distributor.

23. The Adviser and the Affiliated Index Provider will adopt and implement Policies and Procedures to address any potential conflicts of interest. Among other things, the Policies and Procedures will be designed to limit or prohibit communication between employees of the Affiliated Index Provider and its affiliates who have responsibility for the Affiliated Indexes and the Rules Based Process, as well as those employees of the Affiliated Index Provider and its affiliates appointed to assist such employees in the performance of his/her duties (''Index Personnel'') and other employees of the Affiliated Index Provider. The Index Personnel (a) will not have any responsibility for the

Participants will maintain records reflecting beneficial owners of Shares.

[19] Where a Fund permits an in-kind purchaser to substitute cash in lieu of depositing one or more Deposit Instruments, the Transaction Fee imposed on a purchaser or redeemer may be higher.

[20] Applicants are not requesting relief from section 18 of the Act. Accordingly, a Master Fund may require a Transaction Fee payment to cover expenses related to purchases or redemptions of the Master Fund's shares by a Feeder Fund only if it requires the same payment for equivalent purchases or redemptions by any other feeder fund. Thus, for example, a Master Fund may require payment of a Transaction Fee by a Feeder Fund for transactions for 20,000 or more shares so long as it requires payment of the same Transaction Fee by all feeder funds for transactions involving 20,000 or more shares.

[21] The Underlying Indexes may be made available to registered investment companies, as well as separately managed accounts of institutional investors and privately offered funds that are not deemed to be ''investment companies'' in reliance on section 3(c)(1) or 3(c)(7) of the Act and other pooled investment vehicles for which the Adviser acts as adviser or sub-adviser (''Affiliated Accounts'') as well as other such registered investment companies, separately managed accounts, privately offered funds and other pooled investment vehicles for which it does not act either as adviser or sub-adviser (''Unaffiliated Accounts''). The Affiliated Accounts and the Unaffiliated Accounts (collectively, ''Accounts''), like the Funds, would seek to track the performance of one or more Underlying Index(es) by investing in the constituents of such Underlying Index(es) or a representative sample of such constituents of the index. Consistent with the relief requested from section 17(a), the Affiliated Accounts will not engage in Creation Unit transactions with a Fund.

management of the Affiliated Index Funds, or their respective Master Funds, or the Affiliated Accounts, (b) will be expressly prohibited from sharing this information with any employees of the Adviser or those of any Sub-Adviser, that have responsibility for the management of the Affiliated Index Funds, or their respective Master Funds, or any Affiliated Account until such information is publicly announced, and (c) will be expressly prohibited from sharing or using this non-public information in any way except in connection with the performance of their respective duties. In addition, the Adviser and any Sub-Adviser will adopt and implement, pursuant to rule 206(4)–7 under the Advisers Act, written policies and procedures designed to prevent violations of the Advisers Act and the rules thereunder. Also, the Adviser has adopted a code of ethics pursuant to rule 17j–1 under the Act and rule 204A–1 under the Advisers Act (''Code of Ethics''). Any Sub-Adviser will be required to adopt a Code of Ethics and provide the Trust with the certification required by rule 17j–1 under the Act. In conclusion, Applicants submit that the Affiliated Index Funds will operate in a manner very similar to the other index-based ETFs which are currently traded.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that 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. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Section 12(d)(1)(J) 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 provisions of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an ''open-end company'' as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the owner, upon its presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit the Funds to register as open-end management investment companies and issue Shares that are redeemable in Creation Units only.[22] Applicants state that investors may purchase Shares in Creation Units and redeem Creation Units from each Fund. Applicants further state that because the market price of Shares will be disciplined by arbitrage opportunities, investors should be able to buy and sell Shares in the secondary market at prices that do not vary materially from their NAV.

Section 22(d) of the Act and Rule 22c–1 Under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security that is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c–1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (a) prevent dilution caused by certain riskless trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers, and (c) ensure an orderly distribution system of investment company shares by eliminating price competition from non-contract dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Shares does not involve Trust assets and will not result in dilution of an investment in Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because competitive forces will ensure that the difference between the market price of Shares and their NAV remains narrow.

Section 22(e)

7. Section 22(e) of the Act generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants observe that the settlement of redemptions for the Foreign Funds will be contingent not only on the settlement cycle of the U.S. securities markets, but also on the delivery cycles in local markets for the underlying foreign securities held by the Foreign Funds. Applicants believe that under certain circumstances, the delivery cycles for transferring Portfolio Securities to redeeming investors, coupled with local market holiday schedules, will require a delivery process of up to 15 calendar days.[23] Applicants therefore request

[22] The Master Funds will not require relief from sections 2(a)(32) and 5(a)(1) because the Master Funds will operate as traditional mutual funds and issue individually redeemable securities.

[23] In the past, settlement in certain countries, including Russia, has extended to 15 calendar days.

relief from section 22(e) in order to provide for payment or satisfaction of redemptions within the maximum number of calendar days required for such payment or satisfaction in the principal local markets where transactions in the Portfolio Securities of each Foreign Fund customarily clear and settle, but in all cases no later than 15 calendar days following the tender of a Creation Unit.[24] With respect to Future Funds that are Foreign Funds, applicants seek the same relief from section 22(e) only to the extent that circumstances exist similar to those described in the application.

8. Applicants submit that section 22(e) was designed to prevent unreasonable, undisclosed and unforeseen delays in the actual payment of redemption proceeds. Applicants state that allowing redemption payments for Creation Units of a Foreign Fund to be made within a maximum of 15 calendar days would not be inconsistent with the spirit and intent of section 22(e). Applicants state the SAI will identify those instances in a given year where, due to local holidays, more than seven days will be needed to deliver redemption proceeds and will list such holidays and the maximum number of days, but in no case more than 15 calendar days. Applicants are only seeking relief from section 22(e) to the extent that the Foreign Funds effect creations and redemptions of Creation Units in-kind.[25]

9. With respect to Feeder Funds, only in-kind redemptions may proceed on a delayed basis pursuant to the relief requested from section 22(e). In the event of such an in-kind redemption, the Feeder Fund would make a corresponding redemption from the Master Fund. Applicants do not believe the master-feeder structure would have any impact on the delivery cycle.

Section 12(d)(1)

10. Section 12(d)(1)(A) of the Act, in relevant part, prohibits a registered investment company from acquiring securities of an investment company if such securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter or any other broker or dealer from selling the investment company's shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

11. Applicants request an exemption to permit management investment companies (''Investing Management Companies'') and unit investment trusts (''Investing Trusts'') registered under the Act that are not sponsored or advised by the Adviser and are not part of the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act, as the Funds (collectively, ''Fund of Funds'') to acquire Shares beyond the limits of section 12(d)(1)(A). In addition, applicants seek relief to permit the Funds, the Distributor, and any broker-dealer that is registered under the Exchange Act to sell Shares to Fund of Funds in excess of the limits of section 12(d)(1)(B).

12. Each Investing Management Company will be advised by an investment adviser within the meaning of section 2(a)(20)(A) of the Act (the ''Fund of Funds Adviser'') and may be sub-advised by one or more investment advisers within the meaning of section 2(a)(20)(B) of the Act (each a ''Fund of Funds Sub-Adviser''). Any Fund of Funds Adviser or Fund of Funds Sub-Adviser will be registered or not subject to registration under the Advisers Act. Each Investing Trust will have a sponsor (''Sponsor'').

13. Applicants submit that the proposed conditions to the requested relief adequately address the concerns underlying the limits in section 12(d)(1)(A) and (B), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees and overly complex fund structures. Applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

14. Applicants believe that neither the Fund of Funds nor any Fund of Funds Affiliate would be able to exert undue influence over the Funds or any Fund Affiliates.[26] To limit the control that a Fund of Funds may have over a Fund, applicants propose a condition prohibiting a Fund of Funds Adviser or a Sponsor, any person controlling, controlled by, or under common control with the Fund of Funds Adviser or Sponsor, and any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by the Fund of Funds Adviser or Sponsor, or any person controlling, controlled by, or under common control with the Fund of Funds Adviser or Sponsor (''Fund of Funds' Advisory Group'') from controlling (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any Fund of Funds Sub-Adviser, any person controlling, controlled by or under common control with the Fund of Funds Sub-Adviser, and any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Fund of Funds Sub-Adviser or any person controlling, controlled by or under common control with the Fund of Funds Sub-Adviser (''Fund of Funds Sub-Advisory Group''). Applicants propose other conditions to limit the potential for undue influence over the Funds, including that no Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate (''Affiliated Underwriting''). An ''Underwriting Affiliate'' is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Fund of Funds Adviser, Fund of Funds Fund Sub-Adviser, employee or Sponsor of the Fund of Funds, or a person of which any such officer, director, member of an advisory board, Fund of Funds Adviser, Fund of Funds Sub-Adviser, employee or Sponsor is an affiliated person (except that any person whose relationship to the Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate).

15. Applicants do not believe that the proposed arrangement involves

[24] Applicants acknowledge that relief obtained from the requirements of section 22(e) will not affect any obligations applicants may have under rule 15c6–1 under the Exchange Act. Rule 15c6–1 requires that most securities transactions be settled within three business days of the trade date.

[25] The requested exemption from Section 22(e) would only apply to in-kind redemptions by the Feeder Funds and would not apply to in-kind redemptions by other feeder funds.

[26] A ''Fund of Funds Affiliate'' is the Fund of Funds Adviser, Fund of Funds Sub-Adviser, Sponsor, promoter, and principal underwriter of a Fund of Funds, and any person controlling, controlled by, or under common control with any of those entities. A ''Fund Affiliate'' is the investment adviser, promoter, or principal underwriter of a Fund and any person controlling, controlled by or under common control with any of those entities.

excessive layering of fees. The board of directors or trustees of any Investing Management Company, including a majority of the disinterested directors or trustees, will find that the advisory fees charged under the contract are based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract of any Fund (or its respective Master Fund) in which the Acquiring Management Company may invest. In addition, under condition B.5, a Fund of Funds Adviser or a Fund of Funds' trustee or Sponsor, as applicable, will waive fees otherwise payable to it by the Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b–1 under the Act) received from a Fund by the Fund of Funds Adviser, trustee or Sponsor or an affiliated person of the Fund of Funds Adviser, trustee or Sponsor, other than any advisory fees paid to Fund of Funds Adviser, trustee or Sponsor or its affiliated person by a Fund, in connection with the investment by the Fund of Funds in the Fund. Applicants state that any sales charges or service fees on shares of a Fund of Funds will not exceed the limits applicable to a fund of funds set forth in NASD Conduct Rule 2830.[27]

16. Applicants submit that the requested 12(d)(1) Relief addresses concerns over overly complex structures. Applicants note that a Fund (or its respective Master Fund) will be prohibited from acquiring securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund (or its respective Master Fund) to purchase shares of other investment companies for short-term cash management purposes or pursuant to the Master-Feeder Relief.

17. To ensure that a Fund of Funds is aware of the terms and conditions of the requested order, the Fund of Fund must enter into an agreement with the respective Fund (''FOF Participation Agreement''). The FOF Participation Agreement will include an acknowledgment from the Fund of Funds that it may rely on the order only to invest in the Funds and not in any other investment company.

18. Applicants also note that a Fund may choose to reject a direct purchase of Shares by a Fund of Funds. To the extent that a Fund of Funds purchases Shares in the secondary market, a Fund would still retain its ability to reject initial purchases of Shares made in reliance on the requested order by declining to enter into the FOF Participation Agreement prior to any investment by a Fund of Funds in excess of the limits of section 12(d)(1)(A).

19. Applicants also are seeking the Master-Feeder Relief to permit the Feeder Funds to perform creations and redemptions of Shares in-kind in a master-feeder structure. Applicants assert that this structure is substantially identical to traditional master-feeder structures permitted pursuant to the exception provided in section 12(d)(1)(E) of the Act. Section 12(d)(1)(E) provides that the percentage limitations of sections 12(d)(1)(A) and (B) will not apply to a security issued by an investment company (in this case, the shares of the applicable Master Fund) if, among other things, that security is the only investment security held in the investing fund's portfolio (in this case, the Feeder Fund's portfolio). Applicants believe the proposed master-feeder structure complies with section 12(d)(1)(E) because each Feeder Fund will hold only investment securities issued by its corresponding Master Fund; however, the Feeder Funds may receive securities other than securities of its corresponding Master Fund if a Feeder Fund accepts an in-kind creation. To the extent that a Feeder Fund may be deemed to be holding both shares of the Master Fund and other securities, applicants request relief from sections 12(d)(1)(A) and (B). The Feeder Funds would operate in compliance with all other provisions of section 12(d)(1)(E).

Sections 17(a)(1) and (2) of the Act

20. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person (''second-tier affiliate''), from selling any security or other property to or acquiring any security or other property from the company. Section 2(a)(3) of the Act defines ''affiliated person'' of another person to include (a) any person directly or indirectly owning, controlling or holding with power to vote 5% or more of the outstanding voting securities of the other person, and (c) any person directly or indirectly controlling, controlled by or under common control with the other person. Section 2(a)(9) of the Act defines control as the power to exercise a controlling influence over the management of policies of a company. It also provides that a control relationship will be presumed where one person owns more than 25% of a company's voting securities. The Funds may be deemed to be controlled by the Adviser and hence affiliated persons of each other. In addition, the Funds may be deemed to be under common control with any other registered investment company (or series thereof) advised by the Adviser (an ''Affiliated Fund'').

21. Applicants request an exemption from section 17(a) of the Act pursuant to sections 17(b) and 6(c) of the Act to permit persons to effectuate in-kind purchases and redemptions with a Fund when they are affiliated persons or second-tier affiliates of the Fund solely by virtue of one or more of the following: (a) Holding 5% or more, or more than 25%, of the outstanding Shares of one or more Funds; (b) having an affiliation with a person with an ownership interest described in (a); or (c) holding 5% or more, or more than 25%, of the shares of one or more Affiliated Funds.

22. Applicants assert that no useful purpose would be served by prohibiting these types of affiliated persons from acquiring or redeeming Creation Units through in-kind transactions. Except as described in Section II.K.2 of the application, the Deposit Instruments and Redemption Instruments will be the same for all purchasers and redeemers regardless of the their identity. The deposit procedures for both in-kind purchases and in-kind redemptions of Creation Units will be the same for all purchases and redemptions, regardless of size or number. Deposit Instruments and Redemption Instruments will be valued in the same manner as Portfolio Securities are valued for purposes of calculating NAV. Applicants submit that, by using the same standards for valuing Portfolio Securities as are used for calculating in-kind redemptions or purchases, the Fund will ensure that its NAV will not be adversely affected by such transactions. Applicants also believe that in-kind purchases and redemptions will not result in self-dealing or overreaching of the Fund.

23. Applicants also seek relief from section 17(a) to permit a Fund that is an affiliated person or second-tier affiliate of a Fund of Funds to sell its Shares to and redeem its Shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.[28] Applicants state

[27] Any references to NASD Conduct Rule 2830 include any successor or replacement rule to NASD Conduct Rule 2830 that may be adopted by the Financial Industry Regulatory Authority.

[28] To the extent that purchases and sales of Shares occur in the secondary market and not through principal transactions directly between a Fund of

Continued

that the terms of the proposed transactions will be fair and reasonable and will not involve overreaching. Applicants note that any consideration paid by a Fund of Funds for the purchase or redemption of Shares directly from a Fund will be based on the NAV of the Fund in accordance with policies and procedures set forth in the Fund's registration statement.[29] Further, as described in Section II.K.2 of the application, the Deposit Instruments and Redemption Instruments available for a Fund will be the same for all purchasers and redeemers, respectively and will correspond pro rata to the Fund's Portfolio Securities, except as describe above. Applicants also state that the proposed transactions are consistent with the general purposes of the Act and appropriate in the public interest.

24. To the extent that a Fund operates in a master-feeder structure, applicants also request relief permitting the Feeder Funds to engage in in-kind creations and redemptions with the applicable Master Fund. Applicants state that the customary section 17(a)(1) and 17(a)(2) relief would not be sufficient to permit such transactions because the Feeder Funds and the applicable Master Fund could also be affiliated by virtue of having the same investment adviser. However, applicants believe that in-kind creations and redemptions between a Feeder Fund and a Master Fund advised by the same investment adviser do not involve ''overreaching'' by an affiliated person. Such transactions will occur only at the Feeder Fund's proportionate share of the Master Fund's net assets, and the distributed securities will be valued in the same manner as they are valued for the purposes of calculating the applicable Master Fund's NAV. Further, all such transactions will be effected with respect to pre-determined securities and on the same terms with respect to all investors. Finally, such transactions would only occur as a result of, and to effectuate, a creation or redemption transaction between the Feeder Fund and a third-party investor. Applicants believe that the terms of the proposed transactions are reasonable and fair and do not involve overreaching on the part of any person concerned and that the transactions are consistent with the general purposes of the Act.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested ETF Relief will be subject to the following conditions:

A. ETF Relief

1. The requested relief, other than the Section 12(d)(1) relief and the Section 17 relief related to a master-feeder structure, will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of index-based ETFs.

2. As long as a Fund operates in reliance on the Order, the Shares of such Fund will be listed on an Exchange.

3. No Fund will be advertised or marketed as an open-end investment company or mutual fund. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that Shares are not individually redeemable and that owners of Shares may acquire those Shares from the Fund and tender those Shares for redemption to a Fund in Creation Units only.

4. The Web site for the Funds, which is and will be publicly accessible at no charge, will contain, on a per Share basis for each Fund, the prior Business Day's NAV and the market closing price or the Bid/Ask Price, and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV.

B. Section 12(d)(1) Relief

Applicants agree that any order of the Commission granting the requested 12(d)(1) Relief will be subject to the following conditions:

1. The members of a Fund of Funds' Advisory Group will not control (individually or in the aggregate) a Fund (or its respective Master Fund) within the meaning of Section 2(a)(9) of the Act. The members of a Fund of Funds' Sub-Advisory Group will not control (individually or in the aggregate) a Fund (or its respective Master Fund) within the meaning of Section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of a Fund, the Fund of Funds' Advisory Group or the Fund of Funds' Sub-Advisory Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of a Fund, it will vote its Shares of the Fund in the same proportion as the vote of all other holders of the Fund's Shares. This condition does not apply to the Fund of Funds' Sub-Advisory Group with respect to a Fund (or its respective Master Fund) for which the Fund of Funds' Sub-Adviser or a person controlling, controlled by or under common control with the Fund of Funds' Sub-Adviser acts as the investment adviser within the meaning of Section 2(a)(20)(A) of the Act.

2. No Fund of Funds or Fund of Funds Affiliate will cause any existing or potential investment by the Fund of Funds in a Fund to influence the terms of any services or transactions between the Fund of Funds or Fund of Funds Affiliate and the Fund (or its respective Master Fund) or a Fund Affiliate.

3. The board of directors or trustees of an Investing Management Company, including a majority of the non-interested directors or trustees, will adopt procedures reasonably designed to ensure that the Fund of Funds Adviser and Fund of Funds Sub-Adviser are conducting the investment program of the Investing Management Company without taking into account any consideration received by the Investing Management Company or a Fund of Funds Affiliate from a Fund (or its respective Master Fund) or Fund Affiliate in connection with any services or transactions.

4. Once an investment by a Fund of Funds in the securities of a Fund exceeds the limit in Section 12(d)(1)(A)(i) of the Act, the board of directors (''Board'') of the Fund (or its respective Master Fund), including a majority of the non-interested directors or trustees, will determine that any consideration paid by the Fund (or its respective Master Fund) to the Fund of Funds or a Fund of Funds Affiliate in connection with any services or transactions: (i) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Fund (or its respective Master Fund); (ii) is within the range of consideration that the Fund (or its respective Master Fund) would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (iii) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between a Fund (or its respective Master Fund)

Funds and a Fund, relief from section 17(a) would not be necessary. However, the requested relief would apply to direct sales of Shares in Creation Units by a Fund to a Fund of Funds and redemptions of those Shares. The requested relief also is intended to cover the in-kind transactions that may accompany such sales and redemptions. Applicants are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an affiliated person or second-tier affiliate of a Fund of Funds because the Adviser provides investment advisory services to the Fund of Funds.

[29] Applicants acknowledge that receipt of compensation by (a) an affiliated person of a Fund of Funds, or an affiliated person of such person, for the purchase by the Fund of Funds of Shares or (b) an affiliated person of a Fund, or an affiliated person of such person, for the sale by the Fund of its Shares to a Fund of Funds may be prohibited by section 17(e)(1) of the Act. The FOF Participation Agreement also will include this acknowledgment.

and its investment adviser(s), or any person controlling, controlled by or under common control with such investment adviser(s).

5. The Fund of Funds Adviser, or trustee or Sponsor of an Investing Trust, as applicable, will waive fees otherwise payable to it by the Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund (or its respective Master Fund) under Rule 12b–1 under the Act) received from a Fund (or its respective Master Fund) by the Fund of Funds Adviser, or trustee or Sponsor of the Investing Trust, or an affiliated person of the Fund of Funds Adviser, or trustee or Sponsor of the Investing Trust, other than any advisory fees paid to the Fund of Funds Adviser, Trustee or Sponsor of an Investing Trust, or its affiliated person by the Fund (or its respective Master Fund), in connection with the investment by the Fund of Funds in the Fund. Any Fund of Funds Sub-Adviser will waive fees otherwise payable to the Fund of Funds Sub-Adviser, directly or indirectly, by the Investing Management Company in an amount at least equal to any compensation received from a Fund (or its respective Master Fund) by the Fund of Funds Sub-Adviser, or an affiliated person of the Fund of Funds Sub-Adviser, other than any advisory fees paid to the Fund of Funds Sub-Adviser or its affiliated person by the Fund (or its respective Master Fund), in connection with the investment by the Investing Management Company in the Fund made at the direction of the Fund of Funds Sub-Adviser. In the event that the Fund of Funds Sub-Adviser waives fees, the benefit of the waiver will be passed through to the Investing Management Company.

6. No Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund (or its respective Master Fund)) will cause a Fund (or its respective Master Fund) to purchase a security in any Affiliated Underwriting.

7. The Board of a Fund (or its respective Master Fund), including a majority of the non-interested Board members, will adopt procedures reasonably designed to monitor any purchases of securities by the Fund (or its respective Master Fund) in an Affiliated Underwriting, once an investment by a Fund of Funds in the securities of the Fund exceeds the limit of Section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Fund of Funds in the Fund. The Board will consider, among other things: (i) Whether the purchases were consistent with the investment objectives and policies of the Fund (or its respective Master Fund); (ii) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (iii) whether the amount of securities purchased by the Fund (or its respective Master Fund) in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to ensure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders of the Fund.

8. Each Fund (or its respective Master Fund) will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by a Fund of Funds in the securities of the Fund exceeds the limit of Section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

9. Before investing in a Fund in excess of the limits in Section 12(d)(1)(A), a Fund of Funds and the Trust will execute a FOF Participation Agreement stating without limitation that their respective boards of directors or trustees and their investment advisers, or trustee and Sponsor, as applicable, understand the terms and conditions of the Order, and agree to fulfill their responsibilities under the Order. At the time of its investment in Shares of a Fund in excess of the limit in Section 12(d)(1)(A)(i), a Fund of Funds will notify the Fund of the investment. At such time, the Fund of Funds will also transmit to the Fund a list of the names of each Fund of Funds Affiliate and Underwriting Affiliate. The Fund of Funds will notify the Fund of any changes to the list of the names as soon as reasonably practicable after a change occurs. The Fund and the Fund of Funds will maintain and preserve a copy of the Order, the FOF Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

10. Before approving any advisory contract under Section 15 of the Act, the board of directors or trustees of each Investing Management Company, including a majority of the non-interested directors or trustees, will find that the advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund (or its respective Master Fund) in which the Investing Management Company may invest. These findings and their basis will be fully recorded in the minute books of the appropriate Investing Management Company.

11. Any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

12. No Fund (or its respective Master Fund) will acquire securities of an investment company or company relying on Section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in Section 12(d)(1)(A) of the Act, except to the extent (i) the Fund (or its respective Master Fund) acquires securities of another investment company pursuant to exemptive relief from the Commission permitting the Fund (or its respective Master Fund) to acquire securities of one or more investment companies for short-term cash management purposes or (ii) the Fund acquires securities of the Master Fund pursuant to the Master-Feeder Relief.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–05012 Filed 3–4–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68995; File No. TP 13–04]

Order Granting Limited Exemptions From Exchange Act Rule 10b–17 and Rules 101 and 102 of Regulation M to ALPS ETF Trust and U.S. Equity High Volatility Put Write Index Fund Pursuant to Exchange Act Rule 10b–17(b)(2) and Rule 101(d) and 102(e) of Regulation M

February 27, 2013.

By letter dated February 27, 2013 (the ''Letter''), as supplemented by conversations with the staff of the Division of Trading and Markets, counsel for ALPS ETF Trust (the ''Trust'') on behalf of the Trust, the U.S. Equity High Volatility Put Write Index Fund (the ''Fund''), any national securities exchange or association on or through which shares issued by the Fund (''Shares'') may subsequently trade, and persons or entities engaging in transactions in Shares (collectively, the ''Requestors'') requested exemptions, or interpretive or no-action relief, from Rule 10b–17 of the Securities Exchange Act of 1934, as amended (''Exchange Act'') and Rules 101 and 102 of Regulation M in connection with secondary market transactions in Shares and the creation or redemption of aggregations of at least 100,000 Shares (''Creation Units'').

The Trust was organized on September 13, 2007, as a Delaware business trust. The Trust is registered with the Commission under the Investment Company Act of 1940, as amended (''1940 Act''), as an open-end management investment company. The Trust currently consists of approximately ten investment series or portfolios. The Requestors request relief related to the Fund, a newly created series of the Trust. The Fund's investment objective is to seek investment results that correspond generally to the performance, before the Fund's fees and expenses, of an index called the NYSE Arca U.S. Equity High Volatility Put Write Index (the ''Index''). The Index is an index that measures the return of a hypothetical portfolio consisting of exchange-traded put options which have been sold on each of 20 stocks and a cash position.[1] The 20 stocks on which options are sold are those 20 stocks from a selection of the largest capitalized (over $5 billion in market capitalization) stocks which also have listed options and which have the highest volatility, as determined by the index provider, the NYSE Arca, Inc.

The Requestors represent, among other things, the following:

- Shares of the Fund will be issued by the Trust, an open-end management investment company that is registered with the Commission;
- The Trust will continuously redeem Creation Units at net asset value (''NAV'') and the secondary market price of the Shares should not vary substantially from the NAV of such Shares;
- Shares of the Fund will be listed and traded on a national securities exchange or national securities association (each being an ''Exchange'');
- The Fund will hold 20 or more portfolio securities with no one portfolio security constituting more than 25% of the Fund;
- The Fund will be managed to track a particular index, all the components of which have publicly available last sale trade information;
- The intra-day indicative value of the Fund per share and the value of the Index will be publicly disseminated by a major market data vendor throughout the trading day;
- On each business day before commencement of trading in Shares on the Exchange, the Fund will disclose on its Web site the identities and quantities of the Fund's options positions as well as the Treasury bills and other cash instruments held by the Fund that will form the basis for the calculation of the Fund's NAV at the end of the business day;
- The Exchange or other market information provider will disseminate every 15 seconds throughout the trading day through the facilities of the Consolidated Tape Association an amount representing on a per-share basis, the current value of the cash to be deposited as consideration for the purchase of Creation Units;
- The arbitrage mechanism will be facilitated by the transparency of the Fund's portfolio and the availability of the intra-day indicative value, the liquidity of securities and other assets held by the Funds, the ability to access the options sold by the Fund, as well as the arbitrageurs' ability to create workable hedges;
- The Fund will invest solely in liquid securities;
- The Fund will invest in securities that will facilitate an effective and efficient arbitrage mechanism and the ability to create workable hedges; and
- The Requestors believe that arbitrageurs are expected to take advantage of price variations between the Fund's market price and its NAV.

Regulation M

While redeemable securities issued by an open-end management investment company are excepted from the provisions of Rule 101 and 102 of Regulation M, the Requestors may not rely upon that exception for the Shares.[2]

Rule 101 of Regulation M

Generally, Rule 101 of Regulation M is an anti-manipulation rule that, subject to certain exceptions, prohibits any ''distribution participant'' and its ''affiliated purchasers'' from bidding for, purchasing, or attempting to induce any person to bid for or purchase any security which is the subject of a distribution until after the applicable restricted period, except as specifically permitted in the rule. Rule 100 of Regulation M defines ''distribution'' to mean any offering of securities that is distinguished from ordinary trading transactions by the magnitude of the offering and the presence of special selling efforts and selling methods. The provisions of Rule 101 of Regulation M apply to underwriters, prospective underwriters, brokers, dealers, and other persons who have agreed to participate or are participating in a distribution of securities. The Shares are in a continuous distribution and, as such, the restricted period in which distribution participants and their affiliated purchasers are prohibited from bidding for, purchasing, or attempting to induce others to bid for or purchase extends indefinitely.

Based on the representations and facts presented in the Letter, particularly that the Trust is a registered open-end management investment company that will continuously redeem at the NAV Creation Unit size aggregations of the Shares of the Fund and that a close alignment between the market price of Shares and the Fund's NAV is expected, the Commission finds that it is appropriate in the public interest, and consistent with the protection of

[1] The cash position starts at a base of 1000. The cash position is increased by options premiums generated by the options positions comprising the Index and interest on the cash position at an annual rate equal to the three-month Treasury-bill rate. The cash position is decreased by cash settlement on options which finish in-the-money (*i.e.,* where the closing price of the underlying stock at the end of the 60-day period is below the strike price). The cash position is also decreased by a deemed cash distribution paid following each 60-day period, currently targeted at the rate of 1.5% of the value of the Index. However, if the options premiums generated during the period are less than 1.5%, the deemed distribution will be reduced by the amount of the shortfall.

[2] ETFs operate under exemptions from the definitions of ''open-end company'' under Section 5(a)(1) of the 1940 Act and ''redeemable security'' under Section 2(a)(32) of the 1940 Act. The ETFs and their securities do not meet those definitions.

investors, to grant the Trust an exemption from Rule 101 of Regulation M, pursuant to paragraph (d) of Rule 101 of Regulation M, with respect to the Fund, thus permitting persons who may be deemed to be participating in a distribution of Shares of the Fund to bid for or purchase such Shares during their participation in such distribution.[3]

Rule 102 of Regulation M

Rule 102 of Regulation M prohibits issuers, selling security holders, and any affiliated purchaser of such person from bidding for, purchasing, or attempting to induce any person to bid for or purchase a covered security during the applicable restricted period in connection with a distribution of securities effected by or on behalf of an issuer or selling security holder.

Based on the representations and facts presented in the Letter, particularly that the Trust is a registered open-end management investment company that will redeem at the NAV Creation Units of Shares of the Fund and that a close alignment between the market price of Shares and the Fund's NAV is expected, the Commission finds that it is appropriate in the public interest, and consistent with the protection of investors, to grant the Trust an exemption from Rule 102 of Regulation M, pursuant to paragraph (e) of Rule 102 of Regulation M, with respect to the Fund, thus permitting the Fund to redeem Shares of the Fund during the continuous offering of such Shares.

Rule 10b–17

Rule 10b–17, with certain exceptions, requires an issuer of a class of publicly traded securities to give notice of certain specified actions (for example, a dividend distribution) relating to such class of securities in accordance with Rule 10b–17(b). Based on the representations and facts in the Letter, in particular that the concerns that the Commission raised in adopting Rule 10b–17 generally will not be implicated if exemptive relief, subject to the conditions below, is granted to the Trust because market participants will receive timely notification of the existence and timing of a pending distribution,[4] we find that it is appropriate in the public interest, and consistent with the protection of investors, to grant the Trust a conditional exemption from Rule 10b–17.

Conclusion

It is hereby ordered, pursuant to Rule 101(d) of Regulation M, that the Trust is exempt from the requirements of Rules 101 with respect to the Fund, thus permitting persons who may be deemed to be participating in a distribution of Shares of the Fund to bid for or purchase such Shares during their participation in such distribution as described in its letter dated February 27, 2013.

It is further ordered, pursuant to Rule 102(e) of Regulation M, that the Trust is exempt from the requirements of Rule 102 with respect to the Fund, thus permitting the Fund to redeem Shares of the Fund during the continuous offering of such Shares as described in its letter dated February 27, 2013.

It is further ordered, pursuant to Rule 10b–17(b)(2), that the Trust, subject to the conditions contained in this order, is exempt from the requirements of Rule 10b–17 with respect to transactions in the Shares of the Fund as described in its letter dated February 27, 2013.

This exemption from Rule 10b–17 is subject to the following conditions:

- The Trust will comply with Rule 10b–17 except for Rule 10b–17(b)(1)(v)(a) and (b); and
- The Trust will provide the information required by Rule 10b–17(b)(1)(v)(a) and (b) to the Exchange as soon as practicable before trading begins on the ex-dividend date, but in no event later than the time when the Exchange last accepts information relating to distributions on the day before the ex-dividend date.

This exemption is subject to modification or revocation at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act. Persons relying upon this exemption shall discontinue transactions involving the Shares of the Fund under the circumstances described above and in the Letter in the event that any material change occurs with respect to any of the facts presented or representations made by the Requestors. In addition, persons relying on this exemption are directed to the anti-fraud and anti-manipulation provisions of the Exchange Act, particularly Sections 9(a) and 10(b), and Rule 10b–5 thereunder. Responsibility for compliance with these and any other applicable provisions of the federal securities laws must rest with the persons relying on this exemption. This order should not be considered a view with respect to any other question that the proposed transactions may raise, including, but not limited to the adequacy of the disclosure concerning, and the applicability of other federal or state laws to, the proposed transactions.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[5]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–04990 Filed 3–4–13; 8:45 am]

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[3] Additionally, we confirm the interpretation that a redemption of Creation Unit size aggregations of Shares of the Fund and the receipt of securities in exchange by a participant in a distribution of Shares of the Fund would not constitute an ''attempt to induce any person to bid for or purchase, a covered security during the applicable restricted period'' within the meaning of Rule 101 of Regulation M and therefore would not violate that rule.

[4] We also note that timely compliance with Rule 10b–17(b)(1)(v)(a) and (b) would be impractical in light of the nature of the Fund. This is because it is not possible for the Fund to accurately project ten days in advance what dividend, if any, would be paid on a particular record date.

[5] 17 CFR 200.30–3(a)(6) and (9).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, March 7, 2013 at 2:00 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Aguilar, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting will be:

institution and settlement of injunctive actions;

institution and settlement of administrative proceedings; and

other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: February 28, 2013.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–05089 Filed 3–1–13; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68996; File No. SR–NYSE–2013–13]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relocating Certain Futures and Options Trading Conducted on ICE Futures U.S. From Rented Space at the New York Mercantile Exchange to the Exchange's Facilities at 20 Broad Street and Amending NYSE Rule 6A, Which Defines the Terms ''Trading Floor'' and ''NYSE Amex Options Trading Floor''

February 27, 2013.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that February 13, 2013, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to relocate certain futures and options trading conducted on ICE Futures U.S. (''IFUS'') [4] from rented space at the New York Mercantile Exchange (''NYMEX'') to the Exchange's facilities at 20 Broad Street and amend NYSE Rule 6A, which defines the terms ''Trading Floor'' and ''NYSE Amex Options Trading Floor'' (together, the ''Proposal''). 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to make trading space at 20 Broad Street, commonly known as the ''Blue Room'', available to IFUS to accommodate electronic trading of certain futures and options contracts currently conducted on IFUS in space rented from the NYMEX. The arrangement would be pursuant to an arms-length commercial lease. IFUS's lease on its NYMEX trading space expires in June 2013. The Exchange notes that on December 20, 2012, Intercontinental Exchange, Inc. (''ICE'') entered into a merger agreement to acquire the Exchange's parent, NYSE Euronext (the ''Transaction''). IFUS, a wholly-owned subsidiary of ICE, requested assistance in relocating its remaining trading floor following announcement of the Transaction.

IFUS trades its products exclusively on an electronic trading platform and no longer utilizes open outcry trading. Approximately 40 traders (the ''IFUS Traders'') [5] currently utilize the IFUS trading floor (along with a small group of clerical staff they employ) as a place from which they may accept customer orders and execute electronic transactions in IFUS contracts. The IFUS Traders that are proposed to relocate to the Blue Room can execute transactions electronically in all products listed for trading by the IFUS, including futures and options on futures on cotton, frozen concentrated orange juice, coffee, sugar, cocoa, energy, foreign currencies, and certain Russell Indices.[6] However, most of the IFUS Traders predominantly execute transactions in options on cotton futures. The IFUS Traders, collectively, transact less than 5% of average daily IFUS volume excluding IFUS energy contracts (which account for approximately 83% of IFUS's daily volume) [7] and a fraction of 1% of the total average daily IFUS volume (which includes the energy contracts transacted on IFUS). The IFUS Traders do not engage in trading in equity securities or securities options through IFUS.

Further, six of the forty IFUS Traders engage in proprietary-only trading while the rest execute customer orders [8] in addition to proprietary trading. IFUS customer orders may be accepted by telephone or electronically; however, the IFUS Traders cannot verbally discuss orders or transactions with each other while on the trading floor. Communications between traders on the floor must be made via instant message, email, or recorded telephone line. Order tickets are prepared and time-stamped for each customer order, and IFUS, as it does today, would have a compliance officer from IFUS Market Regulation in the Blue Room performing on-site surveillance on a regular basis.

The IFUS Traders will be sitting together in dedicated space in the Blue Room. A small group of NYSE Floor brokers, currently in the Blue Room, will have their booths nearby.[9] Both the space to be assigned to the IFUS Traders and the NYSE Floor broker booths have privacy barriers consisting of eight foot walls which provide visual and sound insulation to reduce the likelihood that trading screens can be viewed or conversations overheard between firms and traders.[10] Consequently, the Exchange believes that the combination of these visual and acoustical barriers, coupled with the IFUS limitations on verbal communications related to an order, substantially eliminate the risk that either the IFUS Traders or NYSE Floor brokers could overhear each

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] IFUS is a Designated Contract Market pursuant to the Commodity Exchange Act, as amended, and is regulated by the U.S. Commodity Futures Trading Commission (''CFTC''). IFUS was formerly known as the New York Board of Trade (''NYBOT'').

[5] None of the IFUS Traders are members of the Exchange, NYSE MKT or NYSE Amex Options.

[6] These include the Russell 2000, Russell 1000, and Russell Value and Growth, all of which qualify as broad-based indices. The Exchange understands, however, that the IFUS Traders primarily trade Russell 2000 mini-contracts.

[7] In other words, the IFUS Traders transact less than 5% of the 17% of IFUS's average daily volume that is not related to energy contracts.

[8] Pursuant to the definition of the term ''floor broker'' in Section 1a(22) of the Commodity Exchange Act, the Floor Traders can only execute customer orders from a trading floor that is operated and supervised by a contract market such as IFUS.

[9] However, the Exchange expects to relocate the NYSE Floor brokers to an area adjacent to the Garage once certain ongoing renovations are complete.

[10] The booths are approximately 40 feet long by 10 feet wide. The barriers are eight feet high on both sides except for the two gated and badge access entry and exit points at the front and back of the booth, which are four feet high.

other's customer orders or other confidential trading information. Nonetheless, the names of the IFUS Traders will be provided to the Financial Industry Regulatory Authority (''FINRA'') which conducts surveillance of the NYSE and NYSE MKT markets to enable FINRA to more readily identify any potentially violative trading by the IFUS Traders.[11]

In light of the fact that the IFUS Traders do not trade any of the products traded on NYSE, and the extremely limited overlap in related products traded by the IFUS Traders and on the NYSE, as well as the very small volume of predominantly cotton options executed by the IFUS Traders, it is highly unlikely that any order handled by one of them could impact the price of any individual security traded on the Exchange. In this regard, the Exchange believes that the pricing correlation between order flow in IFUS products and securities traded on NYSE is tenuous at most. Consequently, even if an NYSE Floor broker in the Blue Room were to overhear the terms of an order handled by an IFUS Trader, or vice-a-versa, the likelihood that the information could be used to benefit that trader's or broker's proprietary, personal or other customer trading is extremely unlikely. This is also true with respect to the Russell Index products given their broad-based nature. The Exchange believes that the same considerations apply with respect to NYSE MKT Equities, which operates on the NYSE Trading floor, and NYSE Amex Options, which operates on a trading floor that is adjacent to NYSE. Nonetheless, NYSE Floor brokers initiating trades based on confidential order information overheard from the IFUS Traders would be subject to disciplinary action for violating NYSE rules, including NYSE Rules 2010 and 2020, which require members and member organizations to observe high standards of commercial honor, to use just and equitable principles of trade, and prohibit the use of manipulative, deceptive or fraudulent devices.

Further, IFUS will issue a regulatory notice specifying the method IFUS Traders must use to access the Blue Room and prohibiting the IFUS Traders from entering the Main Room, where most of the NYSE and NYSE MKT Equities Floor brokers and all NYSE and NYSE MKT Equities Designated Market Makers (''DMMs'') are located as well as the NYSE Amex Options trading floor. Specifically, the IFUS Traders will be required to take the 18 Broad Street entrance elevator and enter the Trading Floor using the turnstile nearest the Blue Room. The Exchange will periodically monitor badge swipes at that turnstile. Moreover, the Exchange will install a security door requiring a badge swipe to enter and exit the physical area to be occupied by the IFUS Traders. The IFUS Traders will also wear distinctive badges and trading jackets. NYSE Floor Governors and FINRA's On Floor Surveillance Unit will be instructed to identify and promptly report violations of the restriction on entering the Main Room to the IFUS Market Supervision officer. IFUS Traders entering the Main Room in violation of this restriction could face disciplinary action pursuant to IFUS Rule 4.04, which prohibits conduct or practices inconsistent with just and equitable principles of trade or conduct detrimental to the best interests of IFUS. The Exchange believes that these restrictions are appropriate to prevent the IFUS Traders from having potential access to any nonpublic information that might be available at the DMM booths.

Based on the limited trading conducted by the IFUS Traders, the extremely limited overlap in products traded and the controls that will be put in place, the Exchange does not believe that the proposed relocation of the IFUS Traders to the Blue Room raises any regulatory concerns.

The Exchange also proposes to amend NYSE Rule 6A, which defines the term ''Trading Floor'' to update the definition. NYSE Rule 6A provides that the term ''Trading Floor'' means the restricted-access physical areas designated by the Exchange for the trading of securities, commonly known as the ''Main Room'' and the ''Garage.'' NYSE Rule 6A further provides that the Exchange's Trading Floor does not include the areas where NYSE Amex-listed options are traded, commonly known as the ''Blue Room'' and the ''Extended Blue Room,'' which, for the purposes of the Exchange's Rules, are referred to as the ''NYSE Amex Options Trading Floor.''

The Exchange proposes to amend NYSE Rule 6A to add ''Blue Room'' to the definition of ''Trading Floor'' and remove that term from the definition of ''NYSE Amex Options Trading Floor''.

The Exchange notes that the proposed rule change would not have an impact on the Exchange's trading rules or the IFUS rules, nor would it have an impact on the Exchange's or IFUS' authority to bring a disciplinary action for violation of those rules.

2. Statutory Basis

The Exchange believes that the Proposal is consistent with the provisions of Section 6 of the Act,[12] in general, and Section 6(b)(5) of the Act,[13] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that the Proposal is designed 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 rule change will permit the Exchange to allow IFUS Traders to utilize space on the trading floor within the existing regulatory framework at the Exchange, to efficiently and effectively conduct business in their respective area consistent with maintaining necessary distinctions between the two organizations. Moreover, the proposed rule changes will impose restrictions designed to prevent inappropriate information sharing by and between members and member firm employees on the Trading Floor of the Exchange and the IFUS Traders in the proposed IFUS Trading area. The Exchange believes that updating the references in the Exchange rules to reflect the correct use of the Exchange Trading Floor may help eliminate potential confusion among investors and other market participants on the Exchange who may not be aware of which portion of the trading space will be used as the Trading Floor.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the Proposal will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposal is designed to promote competition by providing the Exchange the additional flexibility to maximize the use of its trading floor space.

[11] Providing the names of the IFUS Traders to FINRA will be for the purpose of regulatory information sharing. Neither the Exchange nor FINRA will be responsible for regulating or surveilling the IFUS Traders' activity and the IFUS Traders will not be subject to the Exchange's jurisdiction. Rather, the IFUS Traders will continue to be regulated by IFUS as they are today.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4) and (5) [sic].

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [14] and Rule 19b–4(f)(6) thereunder.[15] 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 and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[16] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(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.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [18] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2013–13 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2013–13. 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 20549–1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2013–13 and should be submitted on or before March 26, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–05019 Filed 3–4–13; 8:45 am]

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[14] 15 U.S.C. 78s(b)(3)(A)(iii).

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] 15 U.S.C. 78s(b)(2)(B).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69003; File No. SR–EDGX–2013–08]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend EDGX Rules 1.5, 11.5, 11.8, 11.9 and 11.14 in Connection With the Implementation of the National Market System Plan To Address Extraordinary Market Volatility

February 27, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 13, 2013, EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rules 1.5, 11.5, 11.8, 11.9 and 11.14 regarding the implementation of the National Market System Plan to Address Extraordinary Market Volatility (as amended, the ''Plan'') as approved by the Securities and Exchange Commission.[3] All of the changes described herein are applicable to EDGX Members. The text of the proposed rule change is available on the Exchange's Internet Web site at *www.directedge.com*, at the Exchange's principal office, on the Commission's Internet Web site at *www.sec.gov*, 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 these statements may be examined at

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (approving the Plan on a pilot basis).

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

EDGX proposes to amend Rules 1.5, 11.5, 11.8, 11.9 and 11.14 in connection with the implementation of the Plan.

Background

On April 5, 2011, NYSE Euronext, on behalf of the New York Stock Exchange LLC (''NYSE''), NYSE Amex LLC, and NYSE Arca, Inc. (''Arca''), and the following parties to the Plan: BATS Exchange, Inc., BATS Y-Exchange, Inc. (together, ''BATS''), Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGX, EDGA Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, the Nasdaq Stock Market LLC, and National Stock Exchange, Inc. (collectively with NYSE, NYSE MKT, and Arca, the ''Participants''), filed with the Commission pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act''),[4] and Rule 608 thereunder,[5] the Plan to create a market-wide limit up-limit down (''LULD'') mechanism that is intended to address extraordinary market volatility in NMS Stocks.[6] The Plan sets forth procedures that provide for market-wide LULD requirements that would be designed to prevent trades in individual NMS Stocks from occurring outside of specified price bands. These LULD requirements would be coupled with trading pauses[7] to accommodate more fundamental price moves (as opposed to erroneous trades or momentary gaps in liquidity).

The price bands would consist of a Lower Price Band (the ''Lower Price Band'') and an Upper Price Band (the ''Upper Price Band''—each a ''Price Band'' and, together with the Lower Price Band, the ''Price Bands'') for each NMS Stock. The Price Bands would be calculated by the Securities Information Processors (the ''SIP'' or ''Processors'') responsible for consolidation of information for an NMS Stock pursuant to Rule 603(b) of Regulation NMS under the Act.[8] The Price Bands would be based on a Reference Price[9] that equals the arithmetic mean price of Eligible Reported Transactions[10] for the NMS Stock over the immediately preceding five-minute period. The Price Bands for an NMS Stock would be calculated by applying the Percentage Parameter[11] for such NMS Stock to the Reference Price, with the Lower Price Band being a Percentage Parameter below the Reference Price, and the Upper Price Band being a Percentage Parameter above the Reference Price. Between 9:30 a.m. and 9:45 a.m. ET and 3:35 p.m. and 4:00 p.m. ET, the Price Bands would be calculated by applying double the Percentage Parameters.

Under the Plan, the Exchange is required to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the display of offers below the Lower Price Band and bids above the Upper Price Band for an NMS Stock. The Processors would disseminate an offer below the Lower Price Band or bid above the Upper Price Band that nevertheless inadvertently may be submitted despite such reasonable policies and procedures, but with an appropriate flag identifying it as non-executable; such bid or offer would not be included in National Best Bid (''NBB'') or National Best Offer (''NBO'' and, together with the NBB, the ''NBBO'') calculations. In addition, the Exchange is required to develop, maintain, and enforce policies and procedures reasonably designed to prevent trades at prices outside the Price Bands, with the exception of single-priced opening, reopening, and closing transactions on the primary listing exchange.

In connection with the upcoming implementation of the Plan on April 8, 2013, the Exchange proposes to amend the following rules:

Order Execution (Rule 11.9)

The Exchange proposes to re-organize Rule 11.9 so that matters relevant to order execution would be covered in Rule 11.9(a), while matters relevant to order routing would be covered in Rule 11.9(b). Rules 11.9(a) and (b) would be structured so that each would contain subsections that would describe the manner by which execution and routing would be affected by the Plan, among other regulations. The Exchange proposes to add Rule 11.9(a)(3) that would provide particular details with regard to how the Plan would modify order behavior on the Exchange. Proposed Rule 11.9(a)(3) and its subparagraphs are described below.

Compliance With the Plan

The Exchange proposes to add Rule 11.9(a)(3), which would state that, except as provided in Section VI of the Plan,[12] for any executions to occur during Regular Trading Hours, such executions must occur at a price that is greater than or equal to the Lower Price Band and less than or equal to the Upper Price Band, when such Price Bands are disseminated.

Default Behavior for Non-Routable Orders Not Crossing the Price Bands

The Exchange proposes to add Rule 11.9(a)(3)(A), which would state that, when a non-routable buy (sell) order is entered into the System[13] at a price less (greater) than or equal to the Upper (Lower) Price Band, such order will be posted to the EDGX Book[14] or executed, unless (i) the order is an Immediate-or-Cancel (''IOC'') Order,[15] in which case it will be cancelled if not executed, or (ii) the User[16] has entered instructions to cancel the order.

[4] 15 U.S.C. 78k–1.

[5] 17 CFR 242.608.

[6] *See* Letter from Janet M. McGinness, Senior Vice President, Legal and Corporate Secretary, NYSE Euronext, to Elizabeth M. Murphy, Secretary, Commission, dated April 5, 2011 (''Transmittal Letter''). The term ''NMS Stock'' shall have the meaning provided in Rule 600(b)(47) of Regulation NMS under the Act.

[7] As defined in Section I(X) of the Plan.

[8] 17 CFR 242.603(b).

[9] As defined in Section I(T) of the Plan.

[10] As defined in the proposed Plan, Eligible Reported Transactions would have the meaning prescribed by the Operating Committee for the proposed Plan, and generally mean transactions that are eligible to update the sale price of an NMS Stock.

[11] As initially proposed by the Participants, the Percentage Parameters for Tier 1 NMS Stocks (i.e., stocks in the S&P 500 Index or Russell 1000 Index and certain ETPs) with a Reference Price of $1.00 or more would be five percent and less than $1.00 would be the lesser of (a) $0.15 or (b) 75 percent. The Percentage Parameters for Tier 2 NMS Stocks (i.e., all NMS Stocks other than those in Tier 1) with a Reference Price of $1.00 or more would be 10 percent and less than $1.00 would be the lesser of (a) $0.15 or (b) 75 percent. The Percentage Parameters for a Tier 2 NMS Stock that is a leveraged ETP would be the applicable Percentage Parameter set forth above multiplied by the leverage ratio of such product. On May 24, 2012, the Participants amended the Plan to create a 20% price band for Tier 1 and Tier 2 stocks with a Reference Price of $0.75 or more and up to and including $3.00. The Percentage Parameter for stocks with a Reference Price below $0.75 would be the lesser of (a) $0.15 or (b) 75 percent. *See* Securities Exchange Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012).

[12] Section VI(A)(1) of the Plan provides that ''single-priced opening, reopening, and closing transactions on the Primary Listing Exchange, however, shall be excluded from this limitation. In addition, any transaction that both (i) does not update the last sale price (except if solely because the transaction was reported late), and (ii) is excepted or exempt from Rule 611 under Regulation NMS shall be excluded from this limitation.''

[13] As defined in Rule 1.5(cc).

[14] As defined in Rule 1.5(d).

[15] As defined in Rule 11.5(b)(1).

[16] As defined in Rule 1.5(ee).

Default Behavior when a Non-Routable Buy (Sell) Order Arrives at a Price Higher (Lower) than the Upper (Lower) Price Band

The Exchange proposes to add Rule 11.9(a)(3)(B), which would state that, when a non-routable buy (sell) order arrives at a price greater (less) than the Upper (Lower) Price Band, the Exchange will re-price and display such buy (sell) order at the price of the Upper (Lower) Price Band.

Default Behavior When the Upper (Lower) Price Band Moves to a Price Higher (Lower) Than a Resting Buy (Sell) Order's Displayed Posting Price

If the price of the Upper (Lower) Price Band moves above (below) a non-routable buy (sell) order's displayed posting price, such buy (sell) order will not be adjusted further and will remain posted at the original price at which it was posted to the EDGX Book.

Default Behavior When the Upper (Lower) Price Band Crosses a Resting Buy (Sell) Order's Displayed Posting Price

Proposed Rule 11.9(a)(3)(B) would also state that, when the Upper (Lower) Price Band crosses a non-routable buy (sell) order resting on the EDGX Book, such buy (sell) order will be re-priced to the price of the Upper (Lower) Price Band.

Routable Market and Limit Orders

The Exchange proposes to add Rule 11.9(a)(3)(C), which would cross reference how routable market and limit orders would behave under the Plan.[17] The proposed order handling under the Plan would be set forth in proposed Rule 11.9(b)(1)(B) and described in the section entitled ''Changes in Routing Behavior to Comply with the Plan,'' below.

Short Sale Behavior

The Exchange proposes to add Rule 11.9(a)(3)(D), which would describe how short sale orders would be re-priced in accordance with both Regulation SHO and the Plan. In particular, the proposed rule would state that, where a short sale order is entered into the System with a limit price below the Lower Price Band and a short sale price test restriction under Rule 201 of Regulation SHO (''short sale price test restriction'') is in effect for the covered security, the System will re-price such order to the Lower Price Band as long as the Lower Price Band is at a Permitted Price.[18] When a short sale order is entered into the System with a limit price above the Lower Price Band and a short sale price test restriction is in effect for the covered security, the System will re-price such order, if necessary, at a Permitted Price pursuant to Rule 11.5(c)(4).

Example: Sell Short Order is priced at the Lower Price Band where the Lower Price Band is above the NBB

Assume the NBBO is $10.00 by $10.10, the Price Bands[19] are $10.01 by $10.15, and the short sale price test restriction is in effect. A sell short order arrives to sell 100 shares at $10.00 and is displayed at $10.01. The sell short order will be allowed to be priced at the Lower Price Band so long as the Lower Price Band is above the NBB during the short sale price test restriction.

Policies and Procedures

The Exchange proposes to add Rule 11.9(a)(3)(E) to specify that pursuant to Section IV of the Plan, all Trading Centers[20] in NMS Stocks, including those operated by Members of the Exchange, shall establish maintain, and enforce written policies and procedures that are reasonably designed to comply with the requirements specified in Section VI of the Plan, and to comply with the Trading Pauses specified in Section VII of the Plan.

Applicability of the Plan to Specific Order Types

The following examples and descriptions demonstrate how Rules 11.9(a)(3)(A)–(C), as described above, will affect specific order functionality under the Plan.

Immediate-or-Cancel (''IOC'') Orders

As described in proposed Rule 11.9(a)(3)(A), IOC Orders will be executed to the extent allowed within the Price Bands, and the portion not so executed will be cancelled.

In general, IOC and IOC Intermarket Sweep Orders[21] (''IOC ISO'') will be handled the same way when the Price Bands are inside of the NBBO. Buy IOC/IOC ISOs will be executed up to the Upper Price Band and the remainder will be canceled back to the User. Sell IOC/IOC ISOs will be executed down to the Lower Price Band and the remainder will be canceled back to the User. IOC ISOs will be prevented from executing at prices that cross the Price Bands when the limit price of the ISO crosses a Price Band that is outside of the NBBO.

Example 1: Sell IOC Order Executes Down to the Lower Price Band

Assume the NBBO is $10.00 by $10.10 and the Price Bands are $10.04 by $10.15. Three orders are placed: Order1 to buy 100 shares at $10.02; Order2 to buy 100 shares at $10.04; and an IOC Order to sell 200 shares at $10.02. The IOC Order will execute 100 shares at $10.04 against Order2 and the remaining 100 shares will be cancelled back to the User. The IOC Order cannot execute against Order1 because Order1 is priced below the Lower Price Band.

Example 2: Sell IOC ISO Executes through NBBO Down to the Lower Price Band

Assume the NBBO is $10.00 by $10.10 and the Price Bands are $9.99 by $10.15. Three orders are placed: Order1 to buy 100 shares at $9.99; Order2 to buy 100 shares at $9.98; and an IOC ISO to sell 200 shares at $9.98. The IOC ISO will execute 100 shares at $9.99 against Order1 and the remaining 100 shares will be canceled back to the User. The IOC ISO cannot execute against Order2 because Order2 is priced below the Lower Price Band.

EDGX Only/Post Only Orders[22]

As described in proposed Rule 11.9(a)(3)(B), where a non-routable order such as a EDGX Only/Post Only buy (sell) Order is entered into the System at a price above (below) the Upper (Lower) Price Band, such buy (sell) order will be re-priced and displayed at the price of the Upper (Lower) Price Band. If the Upper (Lower) Price Band moves higher (lower) than the EDGX Only/Post Only buy (sell) Order's posting price, such buy (sell) order will not be adjusted further and will remain at the original price at which it was posted to the EDGX Book.

Example 1: EDGX Only/Post Only Order is entered into the System at a Price That Crosses the Price Bands

Assume the NBBO is $10.00 by $10.10 and the Price Bands are $9.95 by $10.08. An EDGX Only/Post Only buy Order arrives at $10.09. The buy order will be re-priced, displayed and posted to the EDGX Book at $10.08, the price of the Upper Price Band.

Example 2: Price Band Moves Higher Than EDGX Only/Post Only Buy Order on the EDGX Book

Assume the same facts as in Example 1, but now the Price Bands adjust to $9.95 by $10.10. The buy order will not be adjusted further and will instead remain on the EDGX Book at $10.08, the original price at which it was posted to the EDGX Book.

[17] The Exchange notes that the behavior of stop orders and stop limit orders, as defined in Exchange Rule 1.5, are not specifically addressed in this filing as they are converted to market and limit orders when the stop price is elected and will then behave like market or limit orders, respectively, as described above.

[18] As defined in Rule 11.5(c)(4)(B).

[19] Note that Price Band prices used in all examples in this filing are for illustrative purposes only and do not reflect the method by which the actual Price Bands will be calculated in accordance with the Plan.

[20] As defined in Rule 2.11(a).

[21] ISO Orders are described in Exchange Rule 11.5(d) and defined under Regulation NMS. *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[22] As defined in Rules 11.5(c)(4) and (5).

Changes in Routing Behavior to Comply With the Plan

The Exchange proposes to add Rule 11.9(b)(1)(B), which would describe how routing will function under the Plan and would be divided into three major subsections, detailed under the subheadings listed below.

Default Routing Behavior

The first major subsection, proposed Rule 11.9(b)(1)(B)(i), would describe how default routing behavior would function in accordance with the Plan and would state that, in order to comply with the Plan, a routable buy (sell) market or routable marketable limit order will be routed by the Exchange only when the NBO (NBB) is or becomes executable according to the Plan, which would be when the NBO is less than or equal to the Upper Price Band (NBB is greater than or equal to the Lower Price Band). According to the Plan, the NBO (NBB) is or becomes non-executable when the NBO is greater than the Upper Price Band (the NBB is less than the Lower Price Band) (''Non-Executable''). Proposed Rule 11.9(b)(1)(B)(i) would also state that, excluding routing strategies SWPA, SWPB and SWPC, for purposes of Rules 11.9(b)(1)(B)(i)(I) and (II), routing strategies that access all Protected Quotations include the following routing strategies as described in current Rule 11.9(b)(3) (proposed to be re-numbered Rule 11.9(b)(2)): ROUT, ROUX, ROUC, ROUE and ROOC. Routing strategies that do not access all Protected Quotations include all other routing strategies listed in current Rule 11.9(b)(3).

Routing strategies that access all Protected Quotations (other than SWPA, SWPB and SWPC) are designed to maximize liquidity with the intention to fully execute a marketable order. Routing strategies that do not access all Protected Quotations are designed with other objectives in mind and are not as likely to fully execute a marketable order because of the smaller number of liquidity sources accessed. For example, routing strategy ROUZ, which does not access all Protected Quotations, will only access dark pools after interacting with the EDGX Book and then post any remainder to the EDGX Book unless otherwise instructed by the User.

If a marketable order utilizing a routing strategy that accesses all Protected Quotations cannot be executed because the Upper (Lower) Price Band crosses the NBO (NBB) (i.e., the NBO/NBB is non-executable), the Exchange believes that, in order to fulfill the routing strategy's objective of maximizing liquidity and fully executing a marketable order, it is appropriate to re-price such order up to the order's limit price and re-route such order once the Upper (Lower) Price Band no longer crosses the NBO (NBB) (i.e., the NBO/NBB becomes executable).

Below are examples illustrating how default routing behavior will function in accordance with the Plan.[23]

Example: Buy Order Example where NBO is Above the Upper Price Band

Assume the NBBO is $10.00 by $10.10 and the Price Bands are $9.95 by $10.05. Order1 arrives to buy 100 shares at $10.15; Order2 arrives to buy 100 shares as a market order. Neither Order1 nor Order2 will be routed because no buy orders will be routed when the NBO is above the Upper Price Band.

Routable Market Orders

Proposed Rule 11.9(b)(1)(B)(i) would contain two minor subsections, the first of which, proposed Rule 11.9(b)(1)(B)(i)(I), would describe routing behavior under the Plan applicable to routable market orders and would state that, for routing strategies that access all Protected Quotations, if the NBO (NBB) is Non-Executable and a buy (sell) market order is placed, the System will default to re-price such buy (sell) market order and display it at the price of the Upper (Lower) Price Band and will continue to re-price it to the price of the Upper (Lower) Price Band as the Upper (Lower) Price Band adjusts, so long as the buy (sell) market order does not move above (below) its market collar price, as defined in Rule 11.5(a)(2), or alternatively, such buy (sell) market order may be cancelled pursuant to User instruction. For all other routing strategies that do not access all Protected Quotations, routable market orders will not be re-priced and displayed at the price of the Upper (Lower) Price Band and will instead be cancelled if the NBO (NBB) is Non-Executable.

The rule further provides that if the Upper (Lower) Price Band crosses a routable buy (sell) order resting on the EDGX Book, such buy (sell) order will be re-priced to the price of the Upper (Lower) Price Band.

Example 1: Buy Market Order where NBO is Above Upper Price Band

Assume the NBBO is $10.00 by $10.10 and the Price Bands are $9.95 by $10.05. A routable buy market order arrives for 100 shares utilizing a routing strategy that accesses all Protected Quotations (e.g., ROUT). The buy order will not be routed as the NBO is Non-Executable (greater than the Upper Price Band) and will be posted and displayed at $10.05 or cancelled according to the User's instructions.

If the Price Bands move up after the initial re-price to $9.98 by $10.08, the buy order will be re-priced and displayed at $10.08. If the Price Bands moves down after the initial re-price to $9.92 by $10.02, the buy order will be re-priced and displayed at $10.02.

In the same example, if the buy market order arrives for 100 shares utilizing a routing strategy that does not access all Protected Quotations, such as ROCO, then the System will cancel the buy market order when the NBO is Non-Executable and will not re-price and display the order at the price of the Upper Price Band.

Example 2: Market Order is Re-Priced to Market Collar Price as a Result of Movement of the Price Bands

Assume the NBBO is $10.00 by $11.00, the Price Bands are $9.05 by $10.05 and the last sale was at $10.00. A market order arrives to buy 100 shares and is displayed at $10.05 with a market collar of $10.50. The Price Bands then change to $10.00 by $11.00. As a result, the market order is posted and displayed at its collar price of $10.50.

Routable Limit Orders

The second minor subsection, proposed Rule 11.9(b)(1)(B)(i)(II), would describe routing behavior under the Plan applicable to routable limit orders and would state that, if the price of (i) a routable buy (sell) limit order that is entered into the System or (ii) the unfilled balance of such order returned from routing to away Trading Centers is greater (less) than the Upper (Lower) Price Band and is ineligible for routing as a result of the NBO (NBB) being or having become Non-Executable, then the System will default to re-price such buy (sell) order and display it at the price of the Upper (Lower) Price Band, or alternatively, it may be cancelled pursuant to User instruction. For routing strategies that access all Protected Quotations, if the Upper (Lower) Price Band subsequently moves above (below) the routable buy (sell) order's posting price, such routable order will continue to be re-priced to the Upper (Lower) Price Band until the order reaches its limit price. For all other routing strategies that do not access all Protected Quotations, the routable order will not be re-priced to a price above (below) the original price at which it was posted to the EDGX Book.

The rule further provides that if the Upper (Lower) Price Band crosses a routable buy (sell) order resting on the EDGX Book, such buy (sell) order will be re-priced to the price of the Upper (Lower) Price Band.

[23] All of the below examples in this section on changes to the behavior of routable orders as a result of compliance with the Plan assume that there is no liquidity on the EDGX Book.

Example 1: Sell Limit Order That Accesses All Protected Quotations Where NBB Is Below Lower Price Band

Assume the NBBO is $10.02 by $10.10 and the Price Bands are $10.04 by $10.15. A routable sell order arrives for 100 shares at $10.01 utilizing a routing strategy that accesses all Protected Quotations (e.g., ROUT). The sell order will not be routed and will be posted and displayed at $10.04 or cancelled according to the User's instructions.

If the Lower Price Band moves up after the initial re-price to $10.06 by $10.16, the order will be re-priced to display at $10.06. If the Lower Price Band moves down after the initial re-price to $10.03 by $10.13, the order will be re-priced to display at $10.03.

Example 2: Sell Limit Order that does not access all Protected Quotations

Assume the NBBO is $10.02 by $10.10 and the Price Bands are $10.04 by $10.15. A routable sell order arrives for 100 shares at $10.01 utilizing a routing strategy that does not access all Protected Quotations (e.g., ROUZ). The sell order will not be routed and will instead be posted and displayed at $10.04 or cancelled according to the User's instructions.

If the Lower Price Band moves up to $10.06 by $10.16 after the initial re-price, the order will be re-priced and displayed at $10.06. If the Lower Price Band moves down to $10.03 by $10.13 after the initial re-price, the order will be re-priced and displayed at $10.04, the original price at which it was posted to the EDGX Book.

Re-Routing Behavior

The second major subsection, proposed Rule 11.9(b)(1)(B)(ii), would describe how re-routing will function under the Plan and would state that, for routing strategies that access all Protected Quotations, when the Upper (Lower) Price Band adjusts such that the NBO (NBB) becomes executable, a routable buy (sell) market or marketable limit order will be eligible to be re-routed by the Exchange.

Example 1: Routing Buy Order when NBO Becomes Executable

Assume the NBBO is $10.00 by $10.10 and the Price Bands are $9.94 by $10.09. A routable buy market order arrives for 100 shares utilizing a routing strategy that accesses all Protected Quotations (e.g., ROUT).[24] The buy order will not be routed and will instead be posted and displayed at $10.09. The Price Bands change to $9.95 by $10.10. The order will be routed since the NBO is now executable.

Example 2: Routing Sell Order when NBB Becomes Executable

Assume the NBBO is $10.00 by $10.10 and the Price Bands are $10.05 by $10.15. A routable sell order arrives for 100 shares at $9.99 utilizing a routing strategy that accesses all Protected Quotations (e.g., ROUT). The sell order will be re-priced and displayed at $10.05. The Price Bands then change to $9.98 by $10.10. The sell order will be routed since the NBB is now executable.

Behavior of Orders Utilizing SWP Routing Strategies

The third and final major subsection, Rule 11.9(b)(1)(B)(iii), would describe how orders utilizing routing strategies SWPA, SWPB and SWPC[25] (together, ''SWP routing strategies'') will function under the Plan and would state that the System will immediately cancel orders utilizing a SWP routing strategy when an order to buy utilizing an SWP routing strategy has a limit price that is greater than the Upper Price Band or if a sell order utilizing an SWP routing strategy has a limit price that is less than the Lower Price Band. The following examples illustrate how an order utilizing a SWP routing strategy (an ''SWP order'') would behave in accordance with the Plan:

Example 1: Buy SWP Limit Price Crosses the Upper Price Band (Price Band Inside the NBBO)

Assume the NBBO is $10.00 by $10.10 and the Price Bands are $10.00 by $10.08. A SWP order is placed to buy 100 shares at $10.10. The order is rejected immediately because its $10.10 limit price crosses the Upper Price Band.

Example 2: Buy SWP Limit Price Crosses the Upper Price Band (Price Band Outside the NBBO)

Assume the NBBO is $10.00 by $10.10 and the Price Bands are $9.95 by $10.11. A SWP order is placed to buy 100 shares at $10.12. The order is rejected immediately because its $10.12 limit price crosses the Upper Price Band.

Example 3: Buy SWP Limit Price is the same as the price of the Upper Price Band (Price Band Outside the NBBO)

Assume the NBBO is $10.00 by $10.10 and the Price Bands are $9.95 by $10.11. A SWP order is placed to buy 100 shares at $10.11. The order is executed and ISOs can be routed out since the limit of $10.11 is equal to the Upper Price Band.

Miscellaneous Organizational Amendments to Rule 11.9

The Exchange proposes to add Rule 11.9(a)(1) (Compliance with Regulation SHO), which would contain unchanged text from current Rule 11.9(a) relevant to compliance with Regulation SHO. The Exchange proposes to add Rule 11.9(a)(2) (Compliance with Regulation NMS), which would contain unchanged text from current Rule 11.9(a) relevant to compliance with Regulation NMS. The Exchange proposes to re-number current Rule 11.9(a)(1) (Execution against EDGX Book) to new Rule 11.9(a)(4). The text of the rule would remain unchanged.

The Exchange proposes to rename current Rule 11.9(b) (Execution and Routing) to Rule 11.9(b) (Routing). The Exchange proposes to add Rule 11.9(b)(1), which would contain text in current Rule 11.9(b)(2) with regard to routing to away trading centers. The text of the rule will remain unchanged aside from updated cross references. The Exchange also proposes to add Rule 11.9(b)(1)(A), which would contain unchanged text in current Rule 11.9(b)(2) relevant to Regulation SHO. The Exchange proposes to add new Rules 11.9(b)(1)(C) and (D), which would contain the unchanged text of current Rules 11.9(b)(2)(A) and (B), respectively. Lastly, the Exchange proposes to re-number current Rule 11.9(b)(3) to new Rule 11.9(b)(2). The text of the rule will remain unchanged.

Orders and Modifiers (Rule 11.5)

The Exchange proposes to amend cross references in Rules 11.5(a)(2), 11.5(c)(4)–(10), and 11.5(d)(1) in response to the re-numbering of subsections within Rule 11.9, as discussed in detail above.

Mid-Point Match Orders

The Exchange proposes to amend Rule 11.5(c)(7) to describe the behavior of Mid-Point Match (''MPM'') Orders[26] under the Plan.

The Exchange believes that, when a Protected Quotation[27] is crossed by the Price Bands and all Trading Centers have not yet replaced their quotes to re-align them with the Price Bands, the integrity of the NBBO is compromised. In such circumstances, the Exchange believes that it is fair and reasonable to shut down all midpoint trading until the Protected Quotation(s) is(are) no longer crossed by the Price Bands.

In addition, pursuant to Rule 11.9(a)(3), MPM Orders will not trade with any other orders when the midpoint of the NBBO is below the Lower Price Band or above the Upper Price Band since MPM Orders only execute at the midpoint of the NBBO. MPM Orders will continue to execute at the midpoint of the NBBO as long as the execution price is between the Lower and Upper Price Bands.

Example 1: MPM Order Does Not Trade when Upper Price Band Crosses Protected Bids from other Exchanges

Assume the NBBO is $10.00 by $10.01 and the Price Bands are $9.02 by $10.02. The best bids are $10.00 at NYSE, $10.00 at BATS and $9.95 at ARCA. Order1 is placed to Sell 100 shares at $9.95 as a MPM Order. The Price Bands then change to $8.99 by $9.99 and the NBBO changes to $9.95 by $10.01 (BATS and

[24] If, for example, a routing strategy that does not access all Protected Quotations, such as ROUZ, is elected by the User, the order is not re-routed and remains posted on the EDGX Book.

[25] Rules 11.9(b)(3)(o), (p) and (q) define SWPA, SWPB and SWPC routing strategies, respectively.

[26] As defined in Rule 11.5(c)(7).

[27] As defined in Rule 11.5(v).

NYSE's best bids are excluded from the NBBO by the SIP and neither exchange has yet submitted new quotes to the SIP). Order2 is placed to buy 100 shares at $9.99. Order2 does not trade with Order1 and remains posted on the EDGX Book at $9.99.

Example 2: MPM Orders Cannot Trade when the Price Band is Crossing the Midpoint of the NBBO

Assume the NBBO is $10.00 by $10.10 and the Price Bands are $10.00 by $10.04. A MPM Order is placed to buy 100 shares at $11.00 and posted at $10.05. A MPM Order is placed to sell 100 shares at $10.00. The MPM Orders cannot trade at $10.05 because the Upper Price Band is crossing the midpoint of the NBBO. Both orders will remain posted on the EDGX Book at $10.05. No execution will occur between the orders until the Upper Price Band no longer crosses the midpoint of the NBBO.

Priority of Orders (Rule 11.8)

The Exchange proposes to add new Rule 11.8(a)(8), which would state that when a Price Band crosses an order resting on the EDGX Book, such order will be provided a new time stamp [28] and prioritized based on its existing time stamp at the time the new Price Bands are established. Furthermore, if an order is resting on the Book at a price equal to the Upper (Lower) Price Band, such order will not be re-priced, but will be provided a new time stamp and prioritized based on its existing time stamp at the time the new Price Bands are established.

The Exchange views this method of retaining priority based on time as being the method that is most fair to its Members and subject to the least amount of manipulation. The Exchange believes that time priority is a superior approach to price priority because under a time priority approach, it would be more difficult for certain Members to price their orders on the EDGA Book in a way that gives them a potential priority advantage when such orders are subsequently re-priced by a Price Band crossing the price at which such orders reside on the Book.

The following examples demonstrate how order priority will be affected by the Plan.

Example 1: Price Band Crosses Orders Resting on the EDGX Book

Assume the NBBO is $10.00 by $10.10 and the Price Bands are $9.95 by $10.15. Two orders are placed: Order1 arrives to buy 100 shares at $10.05 and then Order2 arrives to buy 100 shares at $10.08. The Price Bands change to $9.95 by $10.05 and Order2 is re-priced to $10.05 as a result of the adjustment of the Upper Price Band. Order3 is then placed to sell 100 shares at $10.05. Order1 will trade with Order3. Initially, Order2 will have price priority while the Price Bands are outside of the NBBO. However, after the Price Bands adjust, Order1 will have priority based on its existing time stamp at the time the new Price Bands were established.

Example 2: Price Band Crosses Orders Resting on the EDGX Book

Assume the NBBO is $10.00 by $10.10 and the Price Bands are $9.95 by $10.15. Two orders are placed: Order1 arrives to buy 100 shares at $10.08 and then Order2 arrives to buy 100 shares at $10.05. The Price Bands change to $9.95 by $10.05 and Order1 is re-priced to $10.05 as a result of the adjustment of the Upper Price Band. Order3 is then placed to sell 100 shares at $10.05. Order1 will trade with Order3 because it retains its priority based on its existing time stamp at the time the new Price Bands were established. When the Price Bands adjusted, both Order1 and Order2 obtained new time stamps and retained priority based on the time stamps that existed relative to one another at the time the new Price Bands were established.

Definitions (Rule 1.5)

The Exchange proposes to add new Rule 1.5(gg), which would define the term the ''Plan'' to mean The National Market System Plan to Address Extraordinary Market Volatility as well as state that a number of terms used in the Rules and related to the Plan shall have the definitions and meanings ascribed to them under the Plan.

Trading Halts Due to Extraordinary Market Volatility (Rule 11.14)

The Exchange proposes to amend Rule 11.14(d) (individual stock trading pauses) to explain how the rule will operate during the phased implementation of the Plan. Currently, under Rule 11.14(d), if a primary listing market issues an individual stock trading pause in any NMS stock, the Exchange will pause trading in that security until trading has resumed on the primary listing market. If, however, trading has not resumed on the primary listing market and ten minutes have passed since the individual stock trading pause message has been received from the responsible single plan processor, the Exchange may resume trading in such stock. During Phase 1 of the Plan, an individual stock trading pause in Tier 1 NMS Stocks that are subject to the requirements of the Plan shall be subject to the Plan. Tier 1 NMS Stocks not yet subject to the requirements of the Plan and Tier 2 NMS Stocks shall be subject to the requirements set forth in paragraph (d) of Rule 11.14. Once the Plan has been fully implemented and all NMS stocks are subject to the Plan, Rule 11.14(d) will no longer apply.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,[29] 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 Exchange believes that the proposed rule change meets these requirements in that it seeks to promote the efficient execution of investor transactions, and thus strengthen investor confidence, over the long term by providing additional transparency regarding the order handling procedures employed by the Exchange and certain obligations of Members when sending orders to the Exchange consistent with the Plan. The Exchange also believes that the proposed amendments to Rules 11.8 and 11.9 will assist Users in executing or displaying their orders consistent with the Plan, especially under fast moving conditions where the Price Bands and NBBO are quickly updating. In addition, Users can choose to use an IOC Order or opt out of certain default re-pricing processes, as described in proposed Rules 11.9(b)(3) and 11.9(b)(1)(B)(i)(I–II), that re-price a buy (sell) order to the price of the Upper (Lower) Price Band. If Users choose to do so, the Exchange will instead cancel their orders instead as per User instructions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that its rules are comparable, in part, with re-pricing and cancellation processes offered by other exchanges in response to the Plan. The Exchange also believes that there is no impact on competition as analogous rule changes are being filed by all Participants to the Plan and the Plan itself was developed and jointly filed by all Participants in the first instance.

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

[28] A new time stamp enables the Exchange's System to record every time an order is re-priced.

[29] 15 U.S.C. 78f(b)(5).

19(b)(3)(A)(iii) of the Act [30] and Rule 19b–4(f)(6) thereunder.[31] 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 and Rule 19b–4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) of the Act [32] to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File No. SR–EDGX–2013–08 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–EDGX–2013–08. 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–EDGX–2013–08 and should be submitted on or before March 26, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[33]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–05004 Filed 3–4–13; 8:45 am]

BILLING CODE 8011–01–P

[30] 15 U.S.C. 78s(b)(3)(A)(iii).

[31] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) 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.

[32] 15 U.S.C. 78s(b)(2)(B).

[33] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68998; File No. SR–CBOE–2013–024]

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

February 27, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 21, 2013, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Fees Schedule of 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.

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 amend the CBSX Fees Schedule with regard to the data reports it provides to Trading Permit Holders (''TPHs'') and other interested parties at their requests. These persons and organizations sometimes approach CBSX and request that CBSX prepare and provide various reports regarding their trading activity. The production of these reports sometimes requires that employees put in a significant amount of time and work to write and develop the programs necessary to be able to run or generate such reports. Currently, the CBSX Fees Schedule does not speak to such requests (though the Fees Schedule of CBOE, CBSX's parent exchange, does [3]). The Exchange proposes to add to the CBSX Fees Schedule a comprehensive, consistent and standard structure

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* CBOE Fees Schedule, Exchange Data Reports table.

regarding the provision of CBSX data reports.

CBSX proposes to establish three different tiers of data report requests. The first, most basic tier (referred to as ''C Level'' requests) will regard requests for standard reports regularly generated and run by CBSX and made available on a daily, weekly or monthly basis that do not require historical data generation, customization beyond a standard format (PDF, HTML, etc.) or distribution frequency (daily, weekly, monthly, etc.), or specialized development. There will be no cost for such requests, regardless of whether they are one-time, initial, or daily, weekly, or monthly requests.

The second tier (referred to as ''B Level'' requests) will regard initial report requests (or enhancements to existing report subscriptions) that require less than one (1) man-hour to develop and/or generate. The [sic] will be no cost for such requests. The third tier (referred to as ''A Level'' requests) will regard initial report requests (or enhancements to existing subscriptions) that require one (1) or more man-hours to develop and/or generate. The cost for such requests will be $100 for first 5 man-hours and $100 per hour for each additional man-hour. Fees for reports will be estimated in advance and such estimates will be provided to the requester. If the estimate changes once creation of the report begins, a revised estimate will be provided to the requester. For parties requesting to receive B or A Level reports on a recurring basis, subscriptions to such reports will be provided at a cost of $100 per month for monthly reports and $200 per month for daily or weekly reports.

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 Section 6(b)(4) of the Act,[5] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities. CBSX believes that the proposed new fee structure for data reports is reasonable because it is designed to reflect CBSX's costs in creating such reports. CBSX believes that the proposed new fee structure for data reports is equitable and not unfairly discriminatory because it will apply to all requesting parties equally. CBSX believes it is equitable and not unfairly discriminatory to assess no fees for C Level reports because these are standard reports that do not require specific development, customization or generation. CBSX believes that it is equitable and not unfairly discriminatory to assess no fees for initial B Level requests because these reports do not require very much (less than one man-hour) work on CBSX's part to create and produce. CBSX believes that it is equitable and not unfairly discriminatory to assess a fee of $100 for the first five man-hours of work for A Level requests because these reports take at least one man-hour of work on CBSX's part to develop and generate and CBSX must begin to recoup the costs of such work, while still desiring to be able to provide requesting market participants with a reasonable amount of information to assist them. CBSX believes that it is equitable and not unfairly discriminatory to assess a fee of $100 per man-hour above five hours for A Level requests because such requests can take up a significant amount of CBSX resources and at this point CBSX must begin to be more fully-compensated for dedicating resources to these tasks. CBSX believes that it is equitable and not unfairly discriminatory to assess subscription fees for requests for information on a more regular basis (as opposed to re-assessing the initial fees) because the development for such work has already been done.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBSX 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. CBSX does not believe that the proposed fees structure will impose an unnecessary burden on intramarket competition because it will apply equally to all requesting parties. CBSX does not believe that the proposed fees structure will impose an unnecessary burden on intermarket competition because CBSX is providing reports specific to activity on CBSX, and other exchanges may provide reports specific to activity on those exchanges, and the costs for development, generation and production of such reports may be different on those exchanges. Further, to the extent that the proposed fees structure for data reports may attract market participants on other exchanges to CBSX, such market participants can always elect to become CBSX market participants.

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) of the Act[6] and paragraph (f) of Rule 19b–4[7] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2013–024 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2013–024. 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

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 C.F.R. 240.19b–4(f).

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–2013–024, and should be submitted on or before March 26, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–04991 Filed 3–4–13; 8:45 am]

BILLING CODE 8011–01–P

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68997; File No. SR–NYSEMKT–2013–13]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relocating Certain Futures and Options Trading Conducted on ICE Futures U.S. From Rented Space at the New York Mercantile Exchange to the Exchange's Facilities at 20 Broad Street and Amending Rule 6A—Equities, Which Defines the Terms ''Trading Floor'' and ''NYSE Amex Options Trading Floor''

February 27, 2013.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on February 13, 2013, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to relocate certain futures and options trading conducted on ICE Futures U.S. (''IFUS'')[4] from rented space at the New York Mercantile Exchange (''NYMEX'') to the Exchange's facilities at 20 Broad Street and amend Rule 6A—Equities, which defines the terms ''Trading Floor'' and ''NYSE Amex Options Trading Floor'' (together, the ''Proposal''). 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to make trading space at 20 Broad Street, commonly known as the ''Blue Room'', available to IFUS to accommodate electronic trading of certain futures and options contracts currently conducted on IFUS in space rented from the NYMEX. The arrangement would be pursuant to an arms-length commercial lease. IFUS's lease on its NYMEX trading space expires in June 2013. The Exchange notes that on December 20, 2012, Intercontinental Exchange, Inc. (''ICE'') entered into a merger agreement to acquire the Exchange's parent, NYSE Euronext (the ''Transaction''). IFUS, a wholly-owned subsidiary of ICE, requested assistance in relocating its remaining trading floor following announcement of the Transaction.

IFUS trades its products exclusively on an electronic trading platform and no longer utilizes open outcry trading. Approximately 40 traders (the ''IFUS Traders'')[5] currently utilize the IFUS trading floor (along with a small group of clerical staff they employ) as a place from which they may accept customer orders and execute electronic transactions in IFUS contracts. The IFUS Traders that are proposed to relocate to the Blue Room can execute transactions electronically in all products listed for trading by the IFUS, including futures and options on futures on cotton, frozen concentrated orange juice, coffee, sugar, cocoa, energy, foreign currencies, and certain Russell Indices.[6] However, most of the IFUS Traders predominantly execute transactions in options on cotton futures. The IFUS Traders, collectively, transact less than 5% of average daily IFUS volume excluding IFUS energy contracts (which account for approximately 83% of IFUS's daily volume)[7] and a fraction of 1% of the total average daily IFUS volume (which includes the energy contracts transacted on IFUS). The IFUS Traders do not engage in trading in equity securities or securities options through IFUS.

Further, six of the forty IFUS Traders engage in proprietary-only trading while the rest execute customer orders[8] in addition to proprietary trading. IFUS customer orders may be accepted by telephone or electronically; however, the IFUS Traders cannot verbally discuss orders or transactions with each other while on the trading floor. Communications between traders on the floor must be made via instant message, email, or recorded telephone line. Order tickets are prepared and time-stamped

[4] IFUS is a Designated Contract Market pursuant to the Commodity Exchange Act, as amended, and is regulated by the U.S. Commodity Futures Trading Commission (''CFTC''). IFUS was formerly known as the New York Board of Trade (''NYBOT'').

[5] None of the IFUS Traders are members of the Exchange, New York Stock Exchange LLC (''NYSE'') or NYSE Amex Options.

[6] These include the Russell 2000, Russell 1000, and Russell Value and Growth, all of which qualify as broad-based indices. The Exchange understands, however, that the IFUS Traders primarily trade Russell 2000 mini-contracts.

[7] In other words, the IFUS Traders transact less than 5% of the 17% of IFUS's average daily volume that is not related to energy contracts.

[8] Pursuant to the definition of the term ''floor broker'' in Section 1a(22) of the Commodity Exchange Act, the Floor Traders can only execute customer orders from a trading floor that is operated and supervised by a contract market such as IFUS.

for each customer order, and IFUS, as it does today, would have a compliance officer from IFUS Market Regulation in the Blue Room performing on-site surveillance on a regular basis.

The IFUS Traders will be sitting together in dedicated space in the Blue Room. A small group of NYSE MKT Floor brokers, currently in the Blue Room, will have their booths nearby.[9] Both the space to be assigned to the IFUS Traders and the NYSE MKT Floor broker booths have privacy barriers consisting of eight foot walls which provide visual and sound insulation to reduce the likelihood that trading screens can be viewed or conversations overheard between firms and traders.[10] Consequently, the Exchange believes that the combination of these visual and acoustical barriers, coupled with the IFUS limitations on verbal communications related to an order, substantially eliminate the risk that either the IFUS Traders or NYSE MKT Floor brokers could overhear each other's customer orders or other confidential trading information. Nonetheless, the names of the IFUS Traders will be provided to the Financial Industry Regulatory Authority (''FINRA'') which conducts surveillance of the NYSE MKT and NYSE markets to enable FINRA to more readily identify any potentially violative trading by the IFUS Traders.[11]

In light of the fact that the IFUS Traders do not trade any of the products traded on NYSE MKT, and the extremely limited overlap in related products traded by the IFUS Traders and on the NYSE MKT, as well as the very small volume of predominantly cotton options executed by the IFUS Traders, it is highly unlikely that any order handled by one of them could impact the price of any individual security traded on the Exchange. In this regard, the Exchange believes that the pricing correlation between order flow in IFUS products and securities traded on NYSE MKT is tenuous at most. Consequently, even if an NYSE MKT Floor broker in the Blue Room were to overhear the terms of an order handled by an IFUS Trader, or vice-a-versa, the likelihood that the information could be used to benefit that trader's or broker's proprietary, personal or other customer trading is extremely unlikely. This is also true with respect to the Russell Index products given their broad-based nature. The Exchange believes that the same considerations apply with respect to the NYSE, which operates on the same Trading floor, and NYSE Amex Options, which operates on a trading floor that is adjacent to NYSE MKT. Nonetheless, NYSE MKT Floor brokers initiating trades based on confidential order information overheard from the IFUS Traders would be subject to disciplinary action for violating NYSE MKT rules, including Rules 2010—Equities and 2020—Equities, which require members and member organizations to observe high standards of commercial honor, to use just and equitable principles of trade, and prohibit the use of manipulative, deceptive or fraudulent devices.

Further, IFUS will issue a regulatory notice specifying the method IFUS Traders must use to access the Blue Room and prohibiting the IFUS Traders from entering the Main Room, where most of the NYSE MKT and NYSE Equities Floor brokers and all NYSE MKT and NYSE Designated Market Makers (''DMMs'') are located as well as the NYSE Amex Options trading floor. Specifically, the IFUS Traders will be required to take the 18 Broad Street entrance elevator and enter the Trading Floor using the turnstile nearest the Blue Room. The Exchange will periodically monitor badge swipes at that turnstile. Moreover, the Exchange will install a security door requiring a badge swipe to enter and exit the physical area to be occupied by the IFUS Traders. The IFUS Traders will also wear distinctive badges and trading jackets. NYSE MKT Floor Governors and FINRA's On Floor Surveillance Unit will be instructed to identify and promptly report violations of the restriction on entering the Main Room to the IFUS Market Supervision officer. IFUS Traders entering the Main Room in violation of this restriction could face disciplinary action pursuant to IFUS Rule 4.04, which prohibits conduct or practices inconsistent with just and equitable principles of trade or conduct detrimental to the best interests of IFUS. The Exchange believes that these restrictions are appropriate to prevent the IFUS Traders from having potential access to any nonpublic information that might be available at the DMM booths.

Based on the limited trading conducted by the IFUS Traders, the extremely limited overlap in products traded and the controls that will be put in place, the Exchange does not believe that the proposed relocation of the IFUS Traders to the Blue Room raises any regulatory concerns.

The Exchange also proposes to amend Rule 6A—Equities, which defines the term ''Trading Floor'' to update the definition. Rule 6A—Equities provides that the term ''Trading Floor'' means the restricted-access physical areas designated by the Exchange for the trading of securities, commonly known as the ''Main Room'' and the ''Garage.'' Rule 6A—Equities further provides that the Exchange's Trading Floor does not include the areas where NYSE Amex-listed options are traded, commonly known as the ''Blue Room'' and the ''Extended Blue Room,'' which, for the purposes of the Exchange's Rules, are referred to as the ''NYSE Amex Options Trading Floor.''

The Exchange proposes to amend Rule 6A—Equities to add ''Blue Room'' to the definition of ''Trading Floor'' and remove that term from the definition of ''NYSE Amex Options Trading Floor''.

The Exchange notes that the proposed rule change would not have an impact on the Exchange's trading rules or the IFUS rules, nor would it have an impact on the Exchange's or IFUS' authority to bring a disciplinary action for violation of those rules.

2. Statutory Basis

The Exchange believes that the Proposal is consistent with the provisions of Section 6 of the Act,[12] in general, and Section 6(b)(5) of the Act,[13] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that the Proposal is designed 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 rule change will permit the Exchange to allow IFUS Traders to utilize space on the trading floor within the existing regulatory framework at the Exchange, to efficiently and effectively conduct business in their respective area consistent with maintaining

[9] However, the Exchange expects to relocate the NYSE MKT Floor brokers to an area adjacent to the Garage once certain ongoing renovations are complete.

[10] The booths are approximately 40 feet long by 10 feet wide. The barriers are eight feet high on both sides except for the two gated and badge access entry and exit points at the front and back of the booth, which are four feet high.

[11] Providing the names of the IFUS Traders to FINRA will be for the purpose of regulatory information sharing. Neither the Exchange nor FINRA will be responsible for regulating or surveilling the IFUS Traders' activity and the IFUS Traders will not be subject to the Exchange's jurisdiction. Rather, the IFUS Traders will continue to be regulated by IFUS as they are today.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4) and (5) [sic].

necessary distinctions between the two organizations. Moreover, the proposed rule changes will impose restrictions designed to prevent inappropriate information sharing by and between members and member firm employees on the Trading Floor of the Exchange and the IFUS Traders in the proposed IFUS Trading area. The Exchange believes that updating the references in the Exchange rules to reflect the correct use of the Exchange Trading Floor may help eliminate potential confusion among investors and other market participants on the Exchange who may not be aware of which portion of the trading space will be used as the Trading Floor.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the Proposal will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposal is designed to promote competition by providing the Exchange the additional flexibility to maximize the use of its trading floor space.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [14] and Rule 19b–4(f)(6) thereunder.[15] 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 and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [16] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(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.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [18] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2013–13 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2013–13. 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 20549–1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2013–13 and should be submitted on or before March 26, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–05018 Filed 3–4–13; 8:45 am]

BILLING CODE 8011–01–P

[14] 15 U.S.C. 78s(b)(3)(A)(iii).

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] 15 U.S.C. 78s(b)(2)(B).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69000; File No. SR–CBOE–2013–023]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule

February 27, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 20, 2013, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, 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 its Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 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 amend its Fees Schedule with regard to the data reports it provides to Trading Permit Holders (''TPHs''), Options Clearing Company (''OCC'') firms and other interested parties at their requests. These persons and organizations often approach the Exchange and request that the Exchange prepare and provide various reports regarding their trading activity. The production of these reports sometimes requires that CBOE employees put in a significant amount of time and work to write and develop the programs necessary to be able to run or generate such reports. Currently, the Fees Schedule merely states that ''Ad Hoc Information Services Requests'' are provided at production costs, that ORS Analysis, Floor Efficiency Project or Market Penetration Reports are assessed a monthly fee of $100, and that ABIL Brokerage Billing are assessed a fee of $0.005 per contract (on a monthly basis, with a minimum of $50 and a maximum of $200 per month). The Exchange proposes to eliminate these statements and replace them with a more comprehensive, consistent and standard structure regarding the provision of Exchange data reports (including those being deleted).

The Exchange proposes to establish three different tiers of data report requests. The first, most basic tier (referred to as ''C Level'' requests) will regard requests for standard reports regularly generated and run by the Exchange and made available on a daily, weekly or monthly basis (for example, Monthly LP Scorecard, Daily Firm Report, etc.) that do not require historical data generation, customization beyond a standard format (PDF, HTML, etc.) or distribution frequency (daily, weekly, monthly, etc.), or specialized development. There will be no cost for such requests, regardless of whether they are one-time, initial, or daily, weekly, or monthly requests.

The second tier (referred to as ''B Level'' requests) will regard initial report requests (or enhancements to existing report subscriptions) that require less than one (1) man-hour to develop and/or generate. The [sic] will be no cost for such requests. The third tier (referred to as ''A Level'' requests) will regard initial report requests (or enhancements to existing subscriptions) that require one (1) or more man-hours to develop and/or generate. The cost for such requests will be $100 for first 5 man-hours and $100 per hour for each additional man-hour. Fees for reports will be estimated in advance and such estimates will be provided to the requester. If the estimate changes once creation of the report begins, a revised estimate will be provided to the requester. For parties requesting to receive B or A Level reports on a recurring basis, subscriptions to such reports will be provided at a cost of $100 per month for monthly reports and $200 per month for daily or weekly reports.

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 requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities. The Exchange believes that the proposed new fee structure for data reports is reasonable because it is designed to reflect the Exchange's costs in creating such reports. The Exchange believes that the proposed new fee structure for data reports is equitable and not unfairly discriminatory because it will apply to all requesting parties equally. The Exchange believes it is equitable and not unfairly discriminatory to assess no fees for C Level reports because these are standard reports that do not require specific development, customization or generation. The Exchange believes that it is equitable and not unfairly discriminatory to assess no fees for initial B Level requests because these reports do not require very much (less than one man-hour) work on the Exchange's part to create and produce. The Exchange believes that it is equitable and not unfairly discriminatory to assess a fee of $100 for the first five man-hours of work for A Level requests because these reports take at least one man-hour of work on the Exchange's part to develop and generate and the Exchange must begin to recoup the costs of such work, while still desiring to be able to provide requesting market participants with a reasonable amount of information to assist them. The Exchange believes that it is equitable and not unfairly discriminatory to assess a fee of $100 per man-hour above five hours for A Level requests because such requests can take up a significant amount of Exchange resources and at this point the Exchange must begin to be more fully-compensated for dedicating resources to these tasks. The Exchange believes that it is equitable and not unfairly discriminatory to assess subscription fees for requests for information on a more regular basis (as opposed to re-assessing the initial fees) because the development for such work has already been done.

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. The Exchange does not believe that the proposed fees structure will impose an unnecessary burden on intramarket competition because it will apply equally to all requesting parties. The Exchange does not believe that the proposed fees structure will impose an unnecessary burden on intermarket competition because the Exchange is providing reports specific to activity on CBOE, and other exchanges may provide reports specific to activity on those exchanges, and the costs for development, generation and production of such reports may be different on those exchanges. Further, to the extent that the proposed fees structure for data reports may attract market participants on other exchanges to CBOE, such market participants can always elect to become CBOE market participants [sic].

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4).

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) of the Act [5] 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. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2013–023 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2013–023. 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–2013–023, and should be submitted on or before March 26, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–04992 Filed 3–4–13; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68999; File No. SR–C2–2013–010]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule

February 27, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 20, 2013, C2 Options Exchange, Incorporated (the ''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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 proposes to amend its Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.c2exchange.com/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 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 amend its Fees Schedule with regard to the data reports it provides to Trading Permit Holders (''TPHs''), Options Clearing Company (''OCC'') firms and other interested parties at their requests. These persons and organizations often approach the Exchange and request that the Exchange prepare and provide various reports regarding their trading activity. The production of these reports sometimes requires that employees put in a significant amount of time and work to write and develop the programs necessary to be able to run or generate such reports. Currently, Section 9 of the Fees Schedule (''Miscellaneous'') merely states that ''Ad Hoc Information Services Requests'' are provided at production costs. The Exchange proposes to eliminate this statement and replace it with a more comprehensive, consistent and standard structure regarding the provision of Exchange data reports (including those being deleted).

The Exchange proposes to establish three different tiers of data report requests. The first, most basic tier (referred to as ''C Level'' requests) will regard requests for standard reports regularly generated and run by the Exchange and made available on a daily, weekly or monthly basis (for example, Monthly LP Scorecard, Daily Firm

Report, etc.) that do not require historical data generation, customization beyond a standard format (PDF, HTML, etc.) or distribution frequency (daily, weekly, monthly, etc.), or specialized development. There will be no cost for such requests, regardless of whether they are one-time, initial, or daily, weekly, or monthly requests.

The second tier (referred to as ''B Level'' requests) will regard initial report requests (or enhancements to existing report subscriptions) that require less than one (1) man-hour to develop and/or generate. The [sic] will be no cost for such requests. The third tier (referred to as ''A Level'' requests) will regard initial report requests (or enhancements to existing subscriptions) that require one (1) or more man-hours to develop and/or generate. The cost for such requests will be $100 for first 5 man-hours and $100 per hour for each additional man-hour. Fees for reports will be estimated in advance and such estimates will be provided to the requester. If the estimate changes once creation of the report begins, a revised estimate will be provided to the requester. For parties requesting to receive B or A Level reports on a recurring basis, subscriptions to such reports will be provided at a cost of $100 per month for monthly reports and $200 per month for daily or weekly reports.

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 requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities. The Exchange believes that the proposed new fee structure for data reports is reasonable because it is designed to reflect the Exchange's costs in creating such reports. The Exchange believes that the proposed new fee structure for data reports is equitable and not unfairly discriminatory because it will apply to all requesting parties equally. The Exchange believes it is equitable and not unfairly discriminatory to assess no fees for C Level reports because these are standard reports that do not require specific development, customization or generation. The Exchange believes that it is equitable and not unfairly discriminatory to assess no fees for initial B Level requests because these reports do not require very much (less than one man-hour) work on the Exchange's part to create and produce. The Exchange believes that it is equitable and not unfairly discriminatory to assess a fee of $100 for the first five man-hours of work for A Level requests because these reports take at least one man-hour of work on the Exchange's part to develop and generate and the Exchange must begin to recoup the costs of such work, while still desiring to be able to provide requesting market participants with a reasonable amount of information to assist them. The Exchange believes that it is equitable and not unfairly discriminatory to assess a fee of $100 per man-hour above five hours for A Level requests because such requests can take up a significant amount of Exchange resources and at this point the Exchange must begin to be more fully-compensated for dedicating resources to these tasks. The Exchange believes that it is equitable and not unfairly discriminatory to assess subscription fees for requests for information on a more regular basis (as opposed to re-assessing the initial fees) because the development for such work has already been done.

B. Self-Regulatory Organization's Statement on Burden on Competition

C2 does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed fees structure will impose an unnecessary burden on intramarket competition because it will apply equally to all requesting parties. The Exchange does not believe that the proposed fees structure will impose an unnecessary burden on intermarket competition because the Exchange is providing reports specific to activity on C2, and other exchanges may provide reports specific to activity on those exchanges, and the costs for development, generation and production of such reports may be different on those exchanges. Further, to the extent that the proposed fees structure for data reports may attract market participants on other exchanges to C2, such market participants can always elect to become C2 market participants.

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) of the Act[5] 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. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. 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–C2–2013–010 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–C2–2013–010. 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

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(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 Number SR–C2–2013–010, and should be submitted on or before March 26, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–04993 Filed 3–4–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69002; File No. SR–EDGA–2013–08]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend EDGA Rules 1.5, 11.5, 11.8, 11.9 and 11.14 in Connection With the Implementation of the National Market System Plan To Address Extraordinary Market Volatility

February 27, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 13, 2013, EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rules 1.5, 11.5, 11.8, 11.9 and 11.14 regarding the implementation of the National Market System Plan to Address Extraordinary Market Volatility (as amended, the ''Plan'') as approved by the Securities and Exchange Commission.[3] All of the changes described herein are applicable to EDGA Members. The text of the proposed rule change is available on the Exchange's Internet Web site at *www.directedge.com,* at the Exchange's principal office, on the Commission's Internet Web site at *www.sec.gov,* 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 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

EDGA proposes to amend Rules 1.5, 11.5, 11.8, 11.9 and 11.14 in connection with the implementation of the Plan.

Background

On April 5, 2011, NYSE Euronext, on behalf of the New York Stock Exchange LLC (''NYSE''), NYSE Amex LLC, and NYSE Arca, Inc. (''Arca''), and the following parties to the Plan: BATS Exchange, Inc., BATS Y-Exchange, Inc. (together, ''BATS''), Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA, EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, the Nasdaq Stock Market LLC, and National Stock Exchange, Inc. (collectively with NYSE, NYSE MKT, and Arca, the ''Participants''), filed with the Commission pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act''),[4] and Rule 608 thereunder,[5] the Plan to create a market-wide limit up-limit down (''LULD'') mechanism that is intended to address extraordinary market volatility in NMS Stocks.[6] The Plan sets forth procedures that provide for market-wide LULD requirements that would be designed to prevent trades in individual NMS Stocks from occurring outside of specified price bands. These LULD requirements would be coupled with trading pauses[7] to accommodate more fundamental price moves (as opposed to erroneous trades or momentary gaps in liquidity).

The price bands would consist of a Lower Price Band (the ''Lower Price Band'') and an Upper Price Band (the ''Upper Price Band''—each a ''Price Band'' and, together with the Lower Price Band, the ''Price Bands'') for each NMS Stock. The Price Bands would be calculated by the Securities Information Processors (the ''SIP'' or ''Processors'') responsible for consolidation of information for an NMS Stock pursuant to Rule 603(b) of Regulation NMS under the Act.[8] The Price Bands would be based on a Reference Price[9] that equals the arithmetic mean price of Eligible Reported Transactions[10] for the NMS Stock over the immediately preceding five-minute period. The Price Bands for an NMS Stock would be calculated by applying the Percentage Parameter[11] for

[7] 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 Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (approving the Plan on a pilot basis).

[4] 15 U.S.C. 78k–1.

[5] 17 CFR 242.608.

[6] *See* Letter from Janet M. McGinness, Senior Vice President, Legal and Corporate Secretary, NYSE Euronext, to Elizabeth M. Murphy, Secretary, Commission, dated April 5, 2011 (''Transmittal Letter''). The term ''NMS Stock'' shall have the meaning provided in Rule 600(b)(47) of Regulation NMS under the Act.

[7] As defined in Section I(X) of the Plan.

[8] 17 CFR 242.603(b).

[9] As defined in Section I(T) of the Plan.

[10] As defined in the proposed Plan, Eligible Reported Transactions would have the meaning prescribed by the Operating Committee for the proposed Plan, and generally mean transactions that are eligible to update the sale price of an NMS Stock.

[11] As initially proposed by the Participants, the Percentage Parameters for Tier 1 NMS Stocks (i.e., stocks in the S&P 500 Index or Russell 1000 Index and certain ETPs) with a Reference Price of $1.00 or more would be five percent and less than $1.00 would be the lesser of (a) $0.15 or (b) 75 percent. The Percentage Parameters for Tier 2 NMS Stocks (i.e., all NMS Stocks other than those in Tier 1) with a Reference Price of $1.00 or more would be 10 percent and less than $1.00 would be the lesser of (a) $0.15 or (b) 75 percent. The Percentage Parameters for a Tier 2 NMS Stock that is a leveraged ETP would be the applicable Percentage Parameter set forth above multiplied by the leverage ratio of such product. On May 24, 2012, the

such NMS Stock to the Reference Price, with the Lower Price Band being a Percentage Parameter below the Reference Price, and the Upper Price Band being a Percentage Parameter above the Reference Price. Between 9:30 a.m. and 9:45 a.m. ET and 3:35 p.m. and 4:00 p.m. ET, the Price Bands would be calculated by applying double the Percentage Parameters.

Under the Plan, the Exchange is required to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the display of offers below the Lower Price Band and bids above the Upper Price Band for an NMS Stock. The Processors would disseminate an offer below the Lower Price Band or bid above the Upper Price Band that nevertheless inadvertently may be submitted despite such reasonable policies and procedures, but with an appropriate flag identifying it as non-executable; such bid or offer would not be included in National Best Bid (''NBB'') or National Best Offer (''NBO'' and, together with the NBB, the ''NBBO'') calculations. In addition, the Exchange is required to develop, maintain, and enforce policies and procedures reasonably designed to prevent trades at prices outside the Price Bands, with the exception of single-priced opening, reopening, and closing transactions on the primary listing exchange.

In connection with the upcoming implementation of the Plan on April 8, 2013, the Exchange proposes to amend the following rules:

Order Execution (Rule 11.9)

The Exchange proposes to re-organize Rule 11.9 so that matters relevant to order execution would be covered in Rule 11.9(a), while matters relevant to order routing would be covered in Rule 11.9(b). Rules 11.9(a) and (b) would be structured so that each would contain subsections that would describe the manner by which execution and routing would be affected by the Plan, among other regulations. The Exchange proposes to add Rule 11.9(a)(3) that would provide particular details with regard to how the Plan would modify order behavior on the Exchange. Proposed Rule 11.9(a)(3) and its subparagraphs are described below.

Compliance With the Plan

The Exchange proposes to add Rule 11.9(a)(3), which would state that, except as provided in Section VI of the Plan,[12] for any executions to occur during Regular Trading Hours, such executions must occur at a price that is greater than or equal to the Lower Price Band and less than or equal to the Upper Price Band, when such Price Bands are disseminated.

Default Behavior for Non-Routable Orders Not Crossing the Price Bands

The Exchange proposes to add Rule 11.9(a)(3)(A), which would state that, when a non-routable buy (sell) order is entered into the System [13] at a price less (greater) than or equal to the Upper (Lower) Price Band, such order will be posted to the EDGA Book [14] or executed, unless (i) the order is an Immediate-or-Cancel (''IOC'') Order,[15] in which case it will be cancelled if not executed, or (ii) the User [16] has entered instructions to cancel the order.

Default Behavior When a Non-Routable Buy (Sell) Order Arrives at a Price Higher (Lower) Than the Upper (Lower) Price Band

The Exchange proposes to add Rule 11.9(a)(3)(B), which would state that, when a non-routable buy (sell) order arrives at a price greater (less) than the Upper (Lower) Price Band, the Exchange will re-price and display such buy (sell) order at the price of the Upper (Lower) Price Band.

Default Behavior When the Upper (Lower) Price Band Moves to a Price Higher (Lower) Than a Resting Buy (Sell) Order's Displayed Posting Price

If the price of the Upper (Lower) Price Band moves above (below) a non-routable buy (sell) order's displayed posting price, such buy (sell) order will not be adjusted further and will remain posted at the original price at which it was posted to the EDGA Book.

Default Behavior When the Upper (Lower) Price Band Crosses a Resting Buy (Sell) Order's Displayed Posting Price

Proposed Rule 11.9(a)(3)(B) would also state that, when the Upper (Lower) Price Band crosses a non-routable buy (sell) order resting on the EDGA Book, such buy (sell) order will be re-priced to the price of the Upper (Lower) Price Band.

Routable Market and Limit Orders

The Exchange proposes to add Rule 11.9(a)(3)(C), which would cross reference how routable market and limit orders would behave under the Plan.[17] The proposed order handling under the Plan would be set forth in proposed Rule 11.9(b)(1)(B) and described in the section entitled ''Changes in Routing Behavior to Comply with the Plan,'' below.

Short Sale Behavior

The Exchange proposes to add Rule 11.9(a)(3)(D), which would describe how short sale orders would be re-priced in accordance with both Regulation SHO and the Plan. In particular, the proposed rule would state that, where a short sale order is entered into the System with a limit price below the Lower Price Band and a short sale price test restriction under Rule 201 of Regulation SHO (''short sale price test restriction'') is in effect for the covered security, the System will re-price such order to the Lower Price Band as long as the Lower Price Band is at a Permitted Price.[18] When a short sale order is entered into the System with a limit price above the Lower Price Band and a short sale price test restriction is in effect for the covered security, the System will re-price such order, if necessary, at a Permitted Price pursuant to Rule 11.5(c)(4).

Example: Sell Short Order is priced at the Lower Price Band where the Lower Price Band is above the NBB

Assume the NBBO is $10.00 by $10.10, the Price Bands [19] are $10.01 by $10.15, and the short sale price test restriction is in effect. A sell short order arrives to sell 100 shares at $10.00 and is displayed at $10.01. The sell short order will be allowed to be priced at

Participants amended the Plan to create a 20% price band for Tier 1 and Tier 2 stocks with a Reference Price of $0.75 or more and up to and including $3.00. The Percentage Parameter for stocks with a Reference Price below $0.75 would be the lesser of (a) $0.15 or (b) 75 percent. *See* Securities Exchange Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012).

[12] Section VI(A)(1) of the Plan provides that ''single-priced opening, reopening, and closing transactions on the Primary Listing Exchange, however, shall be excluded from this limitation. In addition, any transaction that both (i) does not update the last sale price (except if solely because the transaction was reported late), and (ii) is excepted or exempt from Rule 611 under Regulation NMS shall be excluded from this limitation.''

[13] As defined in Rule 1.5(cc).

[14] As defined in Rule 1.5(d).

[15] As defined in Rule 11.5(b)(1).

[16] As defined in Rule 1.5(ee).

[17] The Exchange notes that the behavior of stop orders and stop limit orders, as defined in Exchange Rule 1.5, are not specifically addressed in this filing as they are converted to market and limit orders when the stop price is elected and will then behave like market or limit orders, respectively, as described above.

[18] As defined in Rule 11.5(c)(4)(B).

[19] Note that Price Band prices used in all examples in this filing are for illustrative purposes only and do not reflect the method by which the actual Price Bands will be calculated in accordance with the Plan.

the Lower Price Band so long as the Lower Price Band is above the NBB during the short sale price test restriction.

Policies and Procedures

The Exchange proposes to add Rule 11.9(a)(3)(E) to specify that pursuant to Section IV of the Plan, all Trading Centers [20] in NMS Stocks, including those operated by Members of the Exchange, shall establish maintain, and enforce written policies and procedures that are reasonably designed to comply with the requirements specified in Section VI of the Plan, and to comply with the Trading Pauses specified in Section VII of the Plan.

Applicability of the Plan to Specific Order Types

The following examples and descriptions demonstrate how Rules 11.9(a)(3)(A)–(C), as described above, will affect specific order functionality under the Plan.

Immediate-or-Cancel (''IOC'') Orders

As described in proposed Rule 11.9(a)(3)(A), IOC Orders will be executed to the extent allowed within the Price Bands, and the portion not so executed will be cancelled.

In general, IOC and IOC Intermarket Sweep Orders [21] (''IOC ISO'') will be handled the same way when the Price Bands are inside of the NBBO. Buy IOC/IOC ISOs will be executed up to the Upper Price Band and the remainder will be canceled back to the User. Sell IOC/IOC ISOs will be executed down to the Lower Price Band and the remainder will be canceled back to the User. IOC ISOs will be prevented from executing at prices that cross the Price Bands when the limit price of the ISO crosses a Price Band that is outside of the NBBO.

Example 1: Sell IOC Order Executes Down to the Lower Price Band

Assume the NBBO is $10.00 by $10.10 and the Price Bands are $10.04 by $10.15. Three orders are placed: Order1 to buy 100 shares at $10.02; Order2 to buy 100 shares at $10.04; and an IOC Order to sell 200 shares at $10.02. The IOC Order will execute 100 shares at $10.04 against Order2 and the remaining 100 shares will be cancelled back to the User. The IOC Order cannot execute against Order1 because Order1 is priced below the Lower Price Band.

Example 2: Sell IOC ISO Executes through NBBO Down to the Lower Price Band

Assume the NBBO is $10.00 by $10.10 and the Price Bands are $9.99 by $10.15. Three orders are placed: Order1 to buy 100 shares at $9.99; Order2 to buy 100 shares at $9.98; and an IOC ISO to sell 200 shares at $9.98. The IOC ISO will execute 100 shares at $9.99 against Order1 and the remaining 100 shares will be canceled back to the User. The IOC ISO cannot execute against Order2 because Order2 is priced below the Lower Price Band.

EDGA Only/Post Only Orders [22]

As described in proposed Rule 11.9(a)(3)(B), where a non-routable order such as a EDGA Only/Post Only buy (sell) Order is entered into the System at a price above (below) the Upper (Lower) Price Band, such buy (sell) order will be re-priced and displayed at the price of the Upper (Lower) Price Band. If the Upper (Lower) Price Band moves higher (lower) than the EDGA Only/Post Only buy (sell) Order's posting price, such buy (sell) order will not be adjusted further and will remain at the original price at which it was posted to the EDGA Book.

Example 1: EDGA Only/Post Only Order is entered into the System at a Price that Crosses the Price Bands

Assume the NBBO is $10.00 by $10.10 and the Price Bands are $9.95 by $10.08. An EDGA Only/Post Only buy Order arrives at $10.09. The buy order will be re-priced, displayed and posted to the EDGA Book at $10.08, the price of the Upper Price Band.

Example 2: Price Band Moves Higher Than EDGA Only/Post Only Buy Order on the EDGA Book

Assume the same facts as in Example 1, but now the Price Bands adjust to $9.95 by $10.10. The buy order will not be adjusted further and will instead remain on the EDGA Book at $10.08, the original price at which it was posted to the EDGA Book.

Changes in Routing Behavior To Comply With the Plan

The Exchange proposes to add Rule 11.9(b)(1)(B), which would describe how routing will function under the Plan and would be divided into three major subsections, detailed under the subheadings listed below.

Default Routing Behavior

The first major subsection, proposed Rule 11.9(b)(1)(B)(i), would describe how default routing behavior would function in accordance with the Plan and would state that, in order to comply with the Plan, a routable buy (sell) market or routable marketable limit order will be routed by the Exchange only when the NBO (NBB) is or becomes executable according to the Plan, which would be when the NBO is less than or equal to the Upper Price Band (NBB is greater than or equal to the Lower Price Band). According to the Plan, the NBO (NBB) is or becomes non-executable when the NBO is greater than the Upper Price Band (the NBB is less than the Lower Price Band) (''Non-Executable''). Proposed Rule 11.9(b)(1)(B)(i) would also state that, excluding routing strategies SWPA, SWPB and SWPC, for purposes of Rules 11.9(b)(1)(B)(i)(I) and (II), routing strategies that access all Protected Quotations include the following routing strategies as described in current Rule 11.9(b)(3) (proposed to be re-numbered Rule 11.9(b)(2)): ROUT, ROUX, ROUC, ROUE and ROOC. Routing strategies that do not access all Protected Quotations include all other routing strategies listed in current Rule 11.9(b)(3).

Routing strategies that access all Protected Quotations (other than SWPA, SWPB and SWPC) are designed to maximize liquidity with the intention to fully execute a marketable order. Routing strategies that do not access all Protected Quotations are designed with other objectives in mind and are not as likely to fully execute a marketable order because of the smaller number of liquidity sources accessed. For example, routing strategy ROUZ, which does not access all Protected Quotations, will only access dark pools after interacting with the EDGA Book and then post any remainder to the EDGA Book unless otherwise instructed by the User.

If a marketable order utilizing a routing strategy that accesses all Protected Quotations cannot be executed because the Upper (Lower) Price Band crosses the NBO (NBB) (i.e., the NBO/NBB is non-executable), the Exchange believes that, in order to fulfill the routing strategy's objective of maximizing liquidity and fully executing a marketable order, it is appropriate to re-price such order up to the order's limit price and re-route such order once the Upper (Lower) Price Band no longer crosses the NBO (NBB) (i.e., the NBO/NBB becomes executable).

Below are examples illustrating how default routing behavior will function in accordance with the Plan.[23]

Example: Buy Order Example where NBO is Above the Upper Price Band

Assume the NBBO is $10.00 by $10.10 and the Price Bands are $9.95 by $10.05. Order1 arrives to buy 100 shares at $10.15; Order2 arrives to buy 100 shares as a market order. Neither Order1 nor Order2 will be routed because no buy orders will be routed when the NBO is above the Upper Price Band.

[20] As defined in Rule 2.11(a).

[21] ISO Orders are described in Exchange Rule 11.5(d) and defined under Regulation NMS. *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[22] As defined in Rules 11.5(c)(4) and (5).

[23] All of the below examples in this section on changes to the behavior of routable orders as a result of compliance with the Plan assume that there is no liquidity on the EDGA Book.

Routable Market Orders

Proposed Rule 11.9(b)(1)(B)(i) would contain two minor subsections, the first of which, proposed Rule 11.9(b)(1)(B)(i)(I), would describe routing behavior under the Plan applicable to routable market orders and would state that, for routing strategies that access all Protected Quotations, if the NBO (NBB) is Non-Executable and a buy (sell) market order is placed, the System will default to re-price such buy (sell) market order and display it at the price of the Upper (Lower) Price Band and will continue to re-price it to the price of the Upper (Lower) Price Band as the Upper (Lower) Price Band adjusts, so long as the buy (sell) market order does not move above (below) its market collar price, as defined in Rule 11.5(a)(2), or alternatively, such buy (sell) market order may be cancelled pursuant to User instruction. For all other routing strategies that do not access all Protected Quotations, routable market orders will not be re-priced and displayed at the price of the Upper (Lower) Price Band and will instead be cancelled if the NBO (NBB) is Non-Executable.

The rule further provides that if the Upper (Lower) Price Band crosses a routable buy (sell) order resting on the EDGA Book, such buy (sell) order will be re-priced to the price of the Upper (Lower) Price Band.

Example 1: Buy Market Order where NBO is Above Upper Price Band

Assume the NBBO is $10.00 by $10.10 and the Price Bands are $9.95 by $10.05. A routable buy market order arrives for 100 shares utilizing a routing strategy that accesses all Protected Quotations (e.g., ROUT). The buy order will not be routed as the NBO is Non-Executable (greater than the Upper Price Band) and will be posted and displayed at $10.05 or cancelled according to the User's instructions.

If the Price Bands move up after the initial re-price to $9.98 by $10.08, the buy order will be re-priced and displayed at $10.08. If the Upper Price Band moves down after the initial re-price to $9.92 by $10.02, the buy order will be re-priced and displayed at $10.02.

In the same example, if the buy market order arrives for 100 shares utilizing a routing strategy that does not access all Protected Quotations, such as ROCO, then the System will cancel the buy market order when the NBO is Non-Executable and will not re-price and display the order at the price of the Upper Price Band.

Example 2: Market Order is Re-Priced to Market Collar Price as a Result of Movement of the Price Bands

Assume the NBBO is $10.00 by $11.00, the Price Bands are $9.05 by $10.05 and the last sale was at $10.00. A market order arrives to buy 100 shares and is displayed at $10.05 with a market collar of $10.50. The Price Bands then change to $10.00 by $11.00. As a result, the market order is posted and displayed at its collar price of $10.50.

Routable Limit Orders

The second minor subsection, proposed Rule 11.9(b)(1)(B)(i)(II), would describe routing behavior under the Plan applicable to routable limit orders and would state that, if the price of (i) a routable buy (sell) limit order that is entered into the System or (ii) the unfilled balance of such order returned from routing to away Trading Centers is greater (less) than the Upper (Lower) Price Band and is ineligible for routing as a result of the NBO (NBB) being or having become Non-Executable, then the System will default to re-price such buy (sell) order and display it at the price of the Upper (Lower) Price Band, or alternatively, it may be cancelled pursuant to User instruction. For routing strategies that access all Protected Quotations, if the Upper (Lower) Price Band subsequently moves above (below) the routable buy (sell) order's posting price, such routable order will continue to be re-priced to the Upper (Lower) Price Band until the order reaches its limit price. For all other routing strategies that do not access all Protected Quotations, the routable order will not be re-priced to a price above (below) the original price at which it was posted to the EDGA Book.

The rule further provides that if the Upper (Lower) Price Band crosses a routable buy (sell) order resting on the EDGA Book, such buy (sell) order will be re-priced to the price of the Upper (Lower) Price Band.

Example 1: Sell Limit Order that accesses all Protected Quotations where NBB is Below Lower Price Band

Assume the NBBO is $10.02 by $10.10 and the Price Bands are $10.04 by $10.15. A routable sell order arrives for 100 shares at $10.01 utilizing a routing strategy that accesses all Protected Quotations (e.g., ROUT). The sell order will not be routed and will be posted and displayed at $10.04 or cancelled according to the User's instructions.

If the Price Bands move up after the initial re-price to $10.06 by $10.16, the order will be re-priced to display at $10.06. If the Price Bands move down after the initial re-price to $10.03 by $10.13, the order will be re-priced to display at $10.03.

Example 2: Sell Limit Order that does not access all Protected Quotations

Assume the NBBO is $10.02 by $10.10 and the Price Bands are $10.04 by $10.15. A routable sell order arrives for 100 shares at $10.01 utilizing a routing strategy that does not access all Protected Quotations (e.g., ROUZ). The sell order will not be routed and will instead be posted and displayed at $10.04 or cancelled according to the User's instructions.

If the Price Bands move up to $10.06 by $10.16 after the initial re-price, the order will be re-priced and displayed at $10.06. If the Price Bands move down to $10.03 by $10.13 after the initial re-price, the order will be re-priced and displayed at $10.04, the original price at which it was posted to the EDGA Book.

Re-Routing Behavior

The second major subsection, proposed Rule 11.9(b)(1)(B)(ii), would describe how re-routing will function under the Plan and would state that, for routing strategies that access all Protected Quotations, when the Upper (Lower) Price Band adjusts such that the NBO (NBB) becomes executable, a routable buy (sell) market order or marketable limit order will be eligible to be re-routed by the Exchange.

Example 1: Routing Buy Order when NBO Becomes Executable

Assume the NBBO is $10.00 by $10.10 and the Price Bands are $9.94 by $10.09. A routable buy market order arrives for 100 shares utilizing a routing strategy that accesses all Protected Quotations (e.g., ROUT).[24] The buy order will not be routed and will instead be posted and displayed at $10.09. The Price Bands change to $9.95 by $10.10. The order will be routed since the NBO is now executable.

Example 2: Routing Sell Order when NBB Becomes Executable

Assume the NBBO is $10.00 by $10.10 and the Price Bands are $10.05 by $10.15. A routable sell order arrives for 100 shares at $9.99 utilizing a routing strategy that accesses all Protected Quotations (e.g., ROUT). The sell order will be re-priced and displayed at $10.05. The Price Bands then change to $9.98 by $10.10. The sell order will be routed since the NBB is now executable.

Behavior of Orders Utilizing SWP Routing Strategies

The third and final major subsection, Rule 11.9(b)(1)(B)(iii), would describe how orders utilizing routing strategies SWPA, SWPB and SWPC[25] (together, ''SWP routing strategies'') will function under the Plan and would state that the System will immediately cancel orders utilizing a SWP routing strategy when an order to buy utilizing an SWP routing strategy has a limit price that is greater than the Upper Price Band or if a sell order utilizing an SWP routing strategy has a limit price that is less than the Lower Price Band. The following examples illustrate how an order utilizing a SWP routing strategy (an ''SWP order'') would behave in accordance with the Plan:

[24] If, for example, a routing strategy that does not access all Protected Quotations, such as ROUZ, is elected by the User, the order is not re-routed and remains posted on the EDGA Book.

[25] Rules 11.9(b)(3)(o), (p) and (q) define SWPA, SWPB and SWPC routing strategies, respectively.

Example 1: Buy SWP Limit Price Crosses the Upper Price Band (Price Band Inside the NBBO)

Assume the NBBO is $10.00 by $10.10 and the Price Bands are $10.00 by $10.08. A SWP order is placed to buy 100 shares at $10.10. The order is rejected immediately because its $10.10 limit price crosses the Upper Price Band.

Example 2: Buy SWP Limit Price Crosses the Upper Price Band (Price Band Outside the NBBO)

Assume the NBBO is $10.00 by $10.10 and the Price Bands are $9.95 by $10.11. A SWP order is placed to buy 100 shares at $10.12. The order is rejected immediately because its $10.12 limit price crosses the Upper Price Band.

Example 3: Buy SWP Limit Price is the same as the price of the Upper Price Band (Price Band Outside the NBBO)

Assume the NBBO is $10.00 by $10.10 and the Price Bands are $9.95 by $10.11. A SWP order is placed to buy 100 shares at $10.11. The order is executed and ISOs can be routed out since the limit price of $10.11 is equal to the Upper Price Band.

Miscellaneous Organizational Amendments to Rule 11.9

The Exchange proposes to add Rule 11.9(a)(1) (Compliance with Regulation SHO), which would contain unchanged text from current Rule 11.9(a) relevant to compliance with Regulation SHO. The Exchange proposes to add Rule 11.9(a)(2) (Compliance with Regulation NMS), which would contain unchanged text from current Rule 11.9(a) relevant to compliance with Regulation NMS. The Exchange proposes to re-number current Rule 11.9(a)(1) (Execution against EDGA Book) to new Rule 11.9(a)(4). The text of the rule would remain unchanged.

The Exchange proposes to rename current Rule 11.9(b) (Execution and Routing) to Rule 11.9(b) (Routing). The Exchange proposes to add Rule 11.9(b)(1), which would contain text in current Rule 11.9(b)(2) with regard to routing to away trading centers. The text of the rule will remain unchanged aside from updated cross references. The Exchange also proposes to add Rule 11.9(b)(1)(A), which would contain unchanged text in current Rule 11.9(b)(2) relevant to Regulation SHO. The Exchange proposes to add new Rules 11.9(b)(1)(C) and (D), which would contain the unchanged text of current Rules 11.9(b)(2)(A) and (B), respectively. Lastly, the Exchange proposes to re-number current Rule 11.9(b)(3) to new Rule 11.9(b)(2). The text of the rule will remain unchanged.

Orders and Modifiers (Rule 11.5)

The Exchange proposes to amend cross references in Rules 11.5(a)(2), 11.5(c)(4)–(10), and 11.5(d)(1) in response to the re-numbering of subsections within Rule 11.9, as discussed in detail above.

Mid-Point Peg Orders

The Exchange proposes to amend Rule 11.5(c)(7) to describe the behavior of Mid-Point Peg Orders [26] under the Plan.

The Exchange believes that, when a Protected Quotation [27] is crossed by the Price Bands and all Trading Centers have not yet replaced their quotes to re-align them with the Price Bands, the integrity of the NBBO is compromised. In such circumstances, the Exchange believes that it is fair and reasonable to shut down all midpoint trading until the Protected Quotation is no longer crossed by the Price Bands. Pursuant to Rule 11.9(a)(3), Mid-Point Peg Orders will not trade with any other orders when (i) the price of the Upper Price Band moves below an existing Protected Bid; [28] or (ii) the Lower Price Band moves above an existing Protected Offer.[29] Mid-Point Peg Orders will resume trading against other orders when the conditions in (i) or (ii) no longer exist.

Example 1: Mid-Point Peg Order Does Not Trade when Upper Price Band Crosses Protected Bids from other Exchanges

Assume the NBBO is $10.00 by $10.01 and the Price Bands are $9.02 by $10.02. The best bids are $10.00 at NYSE, $10.00 at BATS and $9.95 at ARCA. Order1 is placed to Sell 100 shares at $9.95 as a Mid-Point Peg Order. The Price Bands then change to $8.99 by $9.99 and the NBBO changes to $9.95 by $10.01 (BATS and NYSE's best bids are excluded from the NBBO by the SIP and neither exchange has yet submitted new quotes to the SIP). Order2 is placed to Buy 100 shares at $9.99. Order2 does not trade with Order1 and remains posted to the EDGA Book at $9.99.

Mid-Point Peg Orders will continue to execute at the midpoint of the NBBO or at prices better than the midpoint of the NBBO as long as the execution price is within the Upper and Lower Price Bands.

The Exchange notes that Mid-Point Peg Orders cannot trade with other Mid-Point Peg Orders when the Upper (Lower) Price Band is crossing the midpoint of the NBBO.

Example 2: Mid-Point Peg Orders Cannot Trade when the Price Band is Crossing the Midpoint of the NBBO

Assume the NBBO is $10.00 by $10.10 and the Price Bands are $10.00 by $10.04. A Mid-Point Peg Order is placed to buy 100 shares at $11.00 and posted at $10.05. A Mid-Point Peg Order is placed to sell 100 shares at $10.00. The Mid-Point Peg Orders cannot trade at $10.05 because the Upper Price Band is crossing the midpoint of the NBBO. Both orders will stay on the EDGA Book at $10.05. No execution will occur between the orders until the Upper Price Band no longer crosses the midpoint of the NBBO.

Mid-Point Discretionary Orders

The Exchange proposes to amend Rule 11.5(c)(17) to describe the behavior of Mid-Point Discretionary Orders under the Plan.

The Exchange believes that, when a Protected Quotation is crossed by the Price Bands and all Trading Centers have not yet replaced their quotes to re-align them with the Price Bands, the integrity of the NBBO is compromised. In such circumstances, the Exchange believes that it is fair and reasonable to shut down all midpoint trading until the Protected Quotation is no longer crossed by the Price Bands. Pursuant to Rule 11.9(a)(3), Mid-Point Discretionary Orders will only execute at their displayed prices and not within their discretionary ranges when (i) the price of the Upper Price Band moves below an existing Protected Bid; or (ii) the Lower Price Band moves above an existing Protected Offer. Mid-Point Discretionary Orders will resume trading against other orders in their discretionary range when the conditions in (i) or (ii) no longer exist.

Example 1: Two Mid-Point Discretionary Orders Do Not Trade with Each Other when Upper Price Band Crosses Protected Bids

Assume the NBBO is $10.00 by $10.01 and the Price Bands are $9.50 by $10.02. The best bids on other exchanges are $10.00 at NYSE, $10.00 at BATS and $9.95 at Arca. Order1 to buy 100 shares at $10.05 is placed as a Mid-Point Discretionary Order. The Price Bands then change to $9.50 by $9.99. The NBBO changes to $9.95 by $10.01 (BATS' and NYSE's best bids are excluded from the NBBO by the SIP and neither exchange has yet submitted new quotes to the SIP). Order2 to sell 100 shares at $9.95 is placed as a Mid-Point Discretionary Order. Order1 and Order2 do not trade and Order2 is instead posted on the EDGA Book.

Example 2: Mid-Point Discretionary Orders Do Not Trade in their Discretionary Ranges when Upper Price Band Crosses Top of Book Bids

Assume the NBBO is $10.00 by $10.01 and the Price Bands are $9.02 by $10.02. The best bids on other exchanges are $10.00 at NYSE, $10.00 at BATS and $9.95 at ARCA. Order1 to Sell 100 shares at $9.95 is placed as a Mid-Point Discretionary Order. The Price Bands then change to $8.99 by $9.99. The NBBO changes to $9.95 by $10.01 (BATS' and NYSE's best bids are excluded from the NBBO by the SIP and neither exchange has yet submitted new quotes to the SIP). Order2 to Buy 100 shares at $9.98 entered. Order1 and Order2 do not trade and Order2 is instead posted on the EDGA Book at $9.98.

Mid-Point Discretionary Orders' discretionary ranges will be shortened to the price of the Price Bands, as necessary.

Example 3: Mid-Point Discretionary Order's Discretionary Range is shortened due to Price Band

[26] As defined in Rule 11.5(c)(7).

[27] As defined in Rule 11.5(v).

[28] As defined in Rule 11.5(v).

[29] As defined in Rule 11.5(v).

Assume the NBBO is $10.00 by $10.08 and the Price Bands are $9.95 by $10.03. Three orders are placed: Order1, a Mid-Point Discretionary Order to buy 100 shares at $10.08; Order2 to sell 100 shares at $10.04; and Order3 to sell 100 shares at $10.03. No trade can occur between the Mid-Point Discretionary Order (Order 1) and Order2 because $10.04 is outside of the Upper Price Band. Order3 will trade with the Mid-Point Discretionary Order (Order 1) at $10.03 because Order3 is within the Price Bands.

Priority of Orders (Rule 11.8)

The Exchange proposes to add new Rule 11.8(a)(8), which would state that when a Price Band crosses an order resting on the EDGA Book, such order will be provided a new time stamp [30] and prioritized based on its existing time stamp at the time the new Price Bands are established. Furthermore, if an order is resting on the Book at a price equal to the Upper (Lower) Price Band, such order will not be re-priced, but will be provided a new time stamp and prioritized based on its existing time stamp at the time the new Price Bands are established.

The Exchange views this method of retaining priority based on time as being the method that is most fair to its Members and subject to the least amount of manipulation. The Exchange believes that time priority is a superior approach to price priority because under a time priority approach, it would be more difficult for certain Members to price their orders on the EDGA Book in a way that gives them a potential priority advantage when such orders are subsequently re-priced by a Price Band crossing the price at which such orders reside on the Book.

The following examples demonstrate how order priority will be affected by the Plan.

Example 1: Price Band Crosses Orders Resting on the EDGA Book

Assume the NBBO is $10.00 by $10.10 and the Price Bands are $9.95 by $10.15. Two orders are placed: Order1 arrives to buy 100 shares at $10.05 and then Order2 arrives to buy 100 shares at $10.08. The Price Bands change to $9.95 by $10.05 and Order2 is re-priced to $10.05 as a result of the adjustment of the Upper Price Band. Order3 is then placed to sell 100 shares at $10.05. Order1 will trade with Order3. Initially, Order2 will have price priority while the Price Bands are outside of the NBBO. However, after the Price Bands adjust, Order1 will have priority based on its existing time stamp at the time the new Price Bands were established.

Example 2: Price Band Crosses Orders Resting on the EDGA Book

Assume the NBBO is $10.00 by $10.10 and the Price Bands are $9.95 by $10.15. Two orders are placed: Order1 arrives to buy 100 shares at $10.08 and then Order2 arrives to buy 100 shares at $10.05. The Price Bands change to $9.95 by $10.05 and Order1 is re-priced to $10.05 as a result of the adjustment of the Upper Price Band. Order3 is then placed to sell 100 shares at $10.05. Order1 will trade with Order3 because it retains its priority based on its existing time stamp at the time the new Price Bands were established. When the Price Bands adjusted, both Order1 and Order2 obtained new time stamps and retained priority based on the time stamps that existed relative to one another at the time the new Price Bands were established.

Definitions (Rule 1.5)

The Exchange proposes to add new Rule 1.5(gg), which would define the term the ''Plan'' to mean The National Market System Plan to Address Extraordinary Market Volatility as well as state that a number of terms used in the Rules and related to the Plan shall have the definitions and meanings ascribed to them under the Plan.

Trading Halts Due to Extraordinary Market Volatility (Rule 11.14)

The Exchange proposes to amend Rule 11.14(d) (individual stock trading pauses) to explain how the rule will operate during the phased implementation of the Plan. Currently, under Rule 11.14(d), if a primary listing market issues an individual stock trading pause in any NMS stock, the Exchange will pause trading in that security until trading has resumed on the primary listing market. If, however, trading has not resumed on the primary listing market and ten minutes have passed since the individual stock trading pause message has been received from the responsible single plan processor, the Exchange may resume trading in such stock. During Phase 1 of the Plan, an individual stock trading pause in Tier 1 NMS Stocks that are subject to the requirements of the Plan shall be subject to the Plan. Tier 1 NMS Stocks not yet subject to the requirements of the Plan and Tier 2 NMS Stocks shall be subject to the requirements set forth in paragraph (d) of Rule 11.14. Once the Plan has been fully implemented and all NMS stocks are subject to the Plan, Rule 11.14(d) will no longer apply.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,[31] 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 Exchange believes that the proposed rule change meets these requirements in that it seeks to promote the efficient execution of investor transactions, and thus strengthen investor confidence, over the long term by providing additional transparency regarding the order handling procedures employed by the Exchange and certain obligations of Members when sending orders to the Exchange consistent with the Plan. The Exchange also believes that the proposed amendments to Rules 11.8 and 11.9 will assist Users in executing or displaying their orders consistent with the Plan, especially under fast moving conditions where the Price Bands and NBBO are quickly updating. In addition, Users can choose to use an IOC Order or opt out of certain default re-pricing processes, as described in proposed Rules 11.9(b)(3) and 11.9(b)(1)(B)(i)(I–II), that re-price a buy (sell) order to the price of the Upper (Lower) Price Band. If Users choose to do so, the Exchange will instead cancel their orders instead as per User instructions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that its rules are comparable, in part, with re-pricing and cancellation processes offered by other exchanges in response to the Plan. The Exchange also believes that there is no impact on competition as analogous rule changes are being filed by all Participants to the Plan and the Plan itself was developed and jointly filed by all Participants in the first instance.

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 [32] and Rule 19b–4(f)(6) thereunder.[33] Because the

[30] A new time stamp enables the Exchange's System to record every time an order is re-priced.

[31] 15 U.S.C. 78f(b)(5).

[32] 15 U.S.C. 78s(b)(3)(A)(iii).

[33] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief

Continued

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 and Rule 19b–4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) of the Act [34] to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–EDGA–2013–08 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–EDGA–2013–08. 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–EDGA–2013–08 and should be submitted on or before March 26, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–05003 Filed 3–4–13; 8:45 am]

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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.

[34] 15 U.S.C. 78s(b)(2)(B).

[35] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Southern USA Resources, Inc., Order of Suspension of Trading

March 1, 2013.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Southern USA Resources, Inc. (''Southern USA'') because of questions regarding the accuracy of publicly-disseminated information concerning, among other things: (1) the company's operations; and (2) the company's outstanding shares. Southern USA's securities are quoted on the OTC Link, operated by OTC Markets Group Inc., under the ticker symbol ''SUSA.''

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. e.s.t., on March 1, 2013 through 11:59 p.m. e.d.t., on March 14, 2013.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–05147 Filed 3–1–13; 11:15 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice 8214]

Shipping Coordinating Committee; Notice of Committee Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting for the International Maritime Organization's Marine Environment Protection Committee (MEPC).

The meeting will be held at 9:30 a.m. on Wednesday, May 8, 2013, in Room 2501 of the United States Coast Guard Headquarters Building, 2100 Second Street SW., Washington, DC, 20593. The primary purpose of the meeting is to prepare for the sixty-fifth session of the International Maritime Organization's Marine Environment Protection Committee (MEPC 65) to be held at the International Maritime Organization in London, United Kingdom from May 13 to 17, 2013.

The primary matters to be considered include the following:

—Harmful aquatic organisms in ballast water;
—Recycling of ships;
—Air pollution and energy efficiency;
—Reduction of GHG emissions from ships;
—Consideration and adoption of amendments to mandatory instruments;
—Interpretation of, and amendments to, MARPOL and related instruments;
—Implementation of the OPRC Convention and the OPRC–HNS Protocol and relevant Conference resolutions;
—Identification and protection of Special Areas and Particularly Sensitive Sea Areas;
—Inadequacy of reception facilities;
—Reports of sub-committees;
—Work of other bodies;
—Harmful anti-fouling systems for ships;
—Promotion of implementation and enforcement of MARPOL and related instruments;
—Technical co-operation activities for the protection of the marine environment;

—Role of the human element;

—Noise from commercial shipping and its adverse impacts on marine life;

—Work program of the Committee and subsidiary bodies;

—Application of the Committees' Guidelines;

—Election of the Chairman and Vice-Chairman for 2014.

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. Regina Bergner not later than Monday, April 29, 2013, 10 days prior to the meeting. Contact should be made by email at *Regina.R.Bergner@uscg.mil;* by phone at (202) 372–1431; or in writing to Ms. Regina Bergner, Commandant (CG–OES–3), U.S. Coast Guard Headquarters, 2100 2nd Street SW., STOP 7126, Washington, DC 20593–7126. Requests made after April 29, 2013, might not be able to be accommodated. Please note that due to security considerations, two valid government-issued photo identifications must be presented to gain entrance to the Headquarters building. The Headquarters building is accessible by taxi and privately owned conveyance (public transportation is not generally available). Public parking is available in the vicinity of the Headquarters building. Additional information regarding this and other IMO SHC public meetings may be found at: *www.uscg.mil/imo.* Electronic copies of documents associated with the 65th Session of MEPC will be available at the public meeting or by request prior to the meeting. U.S. citizens may request copies of MEPC documents prior to the meeting by contacting Ms. Regina Bergner using the information provided above.

Dated: February 14, 2013.

Brian W. Robinson,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 2013–05073 Filed 3–4–13; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Commercial Space Transportation Advisory Committee; Public Teleconference

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Commercial Space Transportation Advisory Committee Teleconference.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 2), notice is hereby given of two teleconferences of the Systems Working Group of the Commercial Space Transportation Advisory Committee (COMSTAC).

DATES: The teleconferences will take place on Thursday, March 21, 2013, and Tuesday, April 16, 2013. Both teleconferences will begin at 1:00 p.m. Eastern Time and will last approximately one hour. The presentation and call-in number will be posted at least one week in advance at *http://www.ast.faa.gov/.*

FOR FURTHER INFORMATION CONTACT: Paul Eckert (AST–3), Office of Commercial Space Transportation (AST), 800 Independence Avenue SW., Room 331, Washington, DC 20591, telephone (202) 267–8655; Email *paul.eckert@faa.gov.* Complete information regarding COMSTAC is available on the FAA Web site at: *http://www.faa.gov/about/office_org/headquarters_offices/ast/advisory_committee/.*

SUPPLEMENTARY INFORMATION: The purpose of these two teleconferences is to assist the FAA in its development of guidelines for the safety of occupants of commercial suborbital and orbital spacecraft. In a **Federal Register** notice dated July 30, 2012, the FAA announced its desire to engage with COMSTAC on a periodic basis, approximately once per month, on specific topics. Six teleconferences have been held to date. The two teleconferences announced today are the last two planned until the FAA issues draft guidelines. The topics for the two teleconferences are as follows:

(1) *Medical Best Practices for Crew and Space Flight Participants.* We would like to explore industry views on medical best practices for occupant safety, to include ensuring that safety critical operations personnel and spaceflight participants are physically capable of performing safety critical tasks. We would like to discuss the following questions from a guidance perspective:

a. What is the appropriate level of medical screening for safety critical operations personnel?

b. What is the appropriate level of medical screening for spaceflight participants?

c. Should there be medical criteria for ending a flight early due to crew or spaceflight participant illness or medical emergency?

d. What type of medical kit should be recommended?

e. What type of flight crew medical training should be recommended?

f. How do the answers to these questions depend on whether a flight is sub-orbital or orbital?

(2) *Communications and Commanding Best Practices for Minimum Level of Safety.* To date, communications (voice, telemetry and command) have been an important element in every human spaceflight mission and the FAA would like to explore industry best practices in this area. We will discuss the following questions from a guidance perspective:

a. Should vehicle-to-ground communications be considered a critical function?

b. What would be the appropriate coverage for the different phases of flight (prelaunch, ascent, orbit, entry, post-landing and aborts)?

c. Should ground voice, telemetry, or commanding be allowed to serve as a part of a hazard control?

d. When would intra-vehicle voice communication be recommended?

e. Should a minimum threshold be set for intelligibility level? What would it be?

f. When would ground monitoring of telemetry and ground control be recommended?

g. What should be included in the telemetry, and how often should it update?

h. Should encryption be required for critical commands?

Interested members of the public may submit relevant written statements for the COMSTAC working group members to consider under the advisory process. Statements may concern the issues and agenda items mentioned above or additional issues that may be relevant for the U.S. commercial space transportation industry. Interested parties wishing to submit written statements should contact Paul Eckert, Designated Federal Officer (the person listed in the **FOR FURTHER INFORMATION CONTACT** section), in writing (mail or email) by March 14, 2013 for the March 21 teleconference, and April 9, 2013 for the April 16 teleconference. This way the information can be made available to COMSTAC members for their review and consideration before each teleconference. Written statements should be supplied in the following formats: one hard copy with original signature or one electronic copy via email.

Individuals who plan to participate and need special assistance should inform the person listed in the **FOR**

FURTHER INFORMATION CONTACT section in advance of the meeting.

Issued in Washington, DC, on February 27, 2013.

George C. Nield,

Associate Administrator for Commercial Space Transportation.

[FR Doc. 2013–05066 Filed 3–4–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA 2013–0058]

Agency Information Collection Activities; Extension of a Currently Approved Collection: Driver Qualification Files

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

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval, and invites public comment. The FMCSA provides an updated estimate of the number of CMV drivers who are required to provide information under the driver qualification (DQ) file regulations, and of the overall information collection burden imposed by those regulations.

DATES: We must receive your comments on or before May 6, 2013.

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA 2013–0058 using one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12–140, 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.
- *Instructions:* All submissions must include the Agency name and docket number. For detailed instructions on submitting comments and additional information on the exemption process, see the *Public Participation* heading below. Note that all comments received will be posted without change to www.regulations.gov, including any personal information provided. Please see the *Privacy Act* heading below.
- *Docket:* For access to the docket to read background documents or comments received, go to *www.regulations.gov,* and follow the online instructions for accessing the dockets, or go to the street address listed above.
- *Privacy Act:* Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's (DOT) complete Privacy Act Statement for the Federal Docket Management System published in the **Federal Register** on December 29, 2010 (75 FR 82133).
- *Public Participation:* The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can obtain electronic submission and retrieval help and guidelines under the ''help'' section of the Federal eRulemaking Portal Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online. Comments received after the comment closing date will be included in the docket and will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Chief, Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Telephone: 202–366–4325. Email: *MCPSD@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Motor Carrier Safety Act of 1984 [Pub. L. 98–554, Title II, 98 Stat. 2834 (October 30, 1984)] requires the Secretary of Transportation to issue regulations pertaining to commercial motor vehicle (CMV) safety. These regulations are also issued under the authority provided by 49 U.S.C. 504, 31133, 31136, 31502 and 49 CFR 1.87. Motor carriers must ensure that the drivers they place in interstate commerce are qualified to operate their assigned CMV. Motor carriers must obtain and maintain specified information concerning the qualifications of the driver to operate a CMV. The information on each CMV driver is maintained in a driver qualification (DQ) file. In some instances, such as during the job application process, the motor carrier must obtain the required information from the CMV driver. Other sections of the DQ file regulations require the motor carrier to contact the driver's State of licensure for a copy of that driver's official driving record. In other cases, such as the background safety investigation of the driver, the motor carrier, with the driver's consent, must contact previous employers of the driver to obtain the required information. The information in a driver's DQ file is not forwarded to the FMCSA. However, the DQ file must be made available to State and Federal safety investigators on demand.

Title: Driver Qualification Files.

OMB Control Number: 2126–0004.

Type of Request: Extension of a currently approved ICR.

Respondents: Interstate motor carriers and drivers.

Estimated Number of Respondents: 42,567,200.

Estimated Time per Response: An average of 28 minutes.

Expiration Date: May 31, 2013.

Frequency of Response: Most of the responses occur on an infrequent basis, such as when a motor carrier hires a CMV driver, or when a motor carrier conducts the required annual review of the driver's DQ file.

Estimated Total Annual Burden: 5,236,866 hours [4,908,333 hours for driver hiring + 237,333 hours for annual review of driver qualifications + 91,200 hours for driver review and rebuttal of safety performance history = 5,236,866]. FMCSA arrives at this estimate by summing the estimated times required for each of 10 regulatory requirements related to the DQ file.

Definitions

(1) ''Federal Motor Carrier Safety Regulations'' (FMCSRs) are parts 350–399 of Title 49 of the Code of Federal Regulations. (2) ''Commercial Motor Vehicle'' (CMV) is ''a self-propelled or towed vehicle used on the highways in interstate commerce to transport passengers or property, if the vehicle—

(A) has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of at least 10,001 pounds, whichever is greater;

(B) Is designed or used to transport more than 8 passengers (including the driver) for compensation;

(C) is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation; or

(D) is used in transporting material found by the Secretary of Transportation to be hazardous under section 5103 of this title and transported in a quantity requiring placarding under regulations prescribed by the Secretary under section 5103.'' (49 CFR 390.5.)

Public Comments Invited

FMCSA requests that you comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for FMCSA to perform its functions, (2) the accuracy of the estimated burden, (3) ways for the FMCSA to enhance the quality, usefulness, and clarity of the collected information, and (4) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize or include your comments in the request for OMB's clearance of this information collection.

Issued on: February 26, 2013.

G. Kelly Leone,

Associate Administrator, Office of Research and Information Technology and Chief Information Officer.

[FR Doc. 2013–05092 Filed 3–4–13; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2011–0318]

Alabama Metal Coil Securement Act; Petition for Determination of Preemption

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

ACTION: Order; Grant of Petition for Determination of Preemption.

SUMMARY: FMCSA grants a petition submitted by the American Trucking Associations (ATA) requesting a determination that the State of Alabama's Metal Coil Securement Act (the Act) is preempted by Federal law. Federal law provides for preemption of State commercial motor vehicle (CMV) safety laws that are more stringent than Federal regulations and (1) Have no safety benefit; (2) are incompatible with Federal regulations; or (3) would cause an unreasonable burden on interstate commerce. FMCSA has determined that there is insufficient support for the claimed safety benefits and that the Act places an unreasonable burden on interstate commerce.

DATES: This decision is effective April 4, 2013.

FOR FURTHER INFORMATION CONTACT: Genevieve D. Sapir, Office of the Chief Counsel, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 366–7056; email *Genevieve.Sapir@dot.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on December 29, 2010 (75 FR 82132).

Background

The Metal Coil Securement Act

The Act, adopted in 2009, prohibits a motor carrier from transporting metal coils in a movement that originates or terminates in Alabama unless the driver is certified in load securement (Ala. Code § 32–9A–2(a)(4)a.). The law, as originally enacted, also required the driver to carry a copy of the certification in the vehicle and produce it upon demand (Ala. Code § 32–9A–2(a)(4)b.). Maximum penalties for violating these requirements include fines of between $5,000 and $10,000, jail time and/or a court order prohibiting the driver from operating a CMV in the State (Ala. Code § 32–9A–4(d)—(g)). Alabama Promulgated Rule No. 760–X–1–.16, adopted on April 5, 2011, offers CMV drivers three options to become certified in load securement: (1) Obtain a Metal Coil Certificate by taking and passing the ''Securing Metal Coils Course'' available for $25.00 on the web site, www.metalcoiltraining.com; (2) obtain a commercial driver's license (CDL) endorsement that allows the driver to haul metal coils in the issuing State; or (3) obtain a Metal Coil Certificate from a motor carrier authorized by the Alabama Department of Public Safety (ADPS) to issue the Certificate, which would require the carrier's safety compliance officer to submit a notarized affidavit that he/she has personal knowledge that the carrier requires every driver to be trained in the requirements of 49 CFR 393.120 before hauling metal coils. Federal regulations for securing metal coil loads, codified in 49 CFR 393.120, do not require any such driver certification.

In June 2011, Alabama amended the Act, rescinding the requirement that drivers carry copies of their metal coil load securement certification in their vehicles. Currently, the Act continues to require drivers to obtain certification, as specified in Alabama Promulgated Rule No. 760–X–1–.16, but drivers are no longer required to produce the certification upon demand.

FMCSA and ATA Responses

On June 26, 2009, FMCSA sent a letter to then-Governor Bob Riley of Alabama stating that the Act appeared to be incompatible with the requirements of FMCSA's Motor Carrier Safety Assistance Program. FMCSA also drew attention to two Federal laws authorizing preemption of State legislation (49 U.S.C. 14506 and 31141) and indicated that they might be applicable. The Agency urged State officials to work together with FMCSA officials to resolve any conflict between State and Federal law. Governor Riley responded on August 26, 2009, explaining that the Act was adopted in response to a number of accidents in Alabama involving the transport of metal coils. Governor Riley took the position that Alabama's metal coil load securement certification requirements were not preempted by Federal law.

On December 22, 2010, ATA petitioned FMCSA for a determination that Alabama's metal coil load securement certification requirements and penalties create an unreasonable burden on interstate commerce and are preempted under 49 U.S.C. 31141. ATA contended that Alabama's requirement that drivers obtain certification in metal coil load securement is more stringent than and incompatible with Federal metal coil safety regulations.

In its December 22, 2010 letter, ATA also requested a determination that the requirement that the driver carry the certification and display it upon demand is preempted by 49 U.S.C. 14506. The recent amendment to the

Act, however, removed this requirement, rendering this aspect of ATA's request moot.

By letter dated January 25, 2011, the ADPS responded to ATA's petition. ADPS acknowledged that the requirements of the Act are more stringent than Federal regulations, but stated that the requirements should not be preempted because they have safety benefits and do not place an unreasonable burden on interstate commerce.

Applicable Law

Section 31141 of title 49, United States Code, prohibits States from enforcing a law or regulation on CMV safety that the Secretary of Transportation (Secretary) has determined to be preempted. To determine whether a State law or regulation is preempted, the Secretary must decide whether a State law or regulation: (1) Has the same effect as a regulation prescribed under 49 U.S.C. 31136, which is the authority for much of the Federal Motor Carrier Safety Regulations (FMCSRs); (2) is less stringent than such a regulation; or (3) is additional to or more stringent than such a regulation (49 U.S.C. 31141(c)(1)). If the Secretary determines that a State law or regulation has the same effect as a regulation based on § 31136, it may be enforced (49 U.S.C. 31141(c)(2)). A State law or regulation that is less stringent may not be enforced (49 U.S.C. 31141(c)(3)). And a State law or regulation the Secretary determined to be additional to or more stringent than a regulation based on § 31136 may be enforced unless the Secretary decides that the State law or regulation (1) Has no safety benefit; (2) is incompatible with the regulation prescribed by the Secretary; or (3) would cause an unreasonable burden on interstate commerce (49 U.S.C. 31141(c)(4)). To determine whether a State law or regulation will cause an unreasonable burden on interstate commerce, the Secretary may consider the cumulative effect that the State's law or regulation and all similar laws and regulations of other States will have on interstate commerce (49 U.S.C. 31141(c)(5)). The Secretary's authority under § 31141 is delegated to the FMCSA Administrator by 49 CFR 1.87(f).

Comments

FMCSA published a notice in the **Federal Register** on November 23, 2011 (76 FR 72495) seeking comment on whether the Act is preempted by Federal law. Although preemption under § 31141 is a legal determination reserved to the judgment of the Agency, FMCSA sought comment on what effect, if any, Alabama's metal coil load securement certification requirement has on interstate motor carrier operations. FMCSA received thirteen comments in response. The five comments opposing preemption included one each from an individual driver, a motor carrier, Advocates for Highway and Auto Safety (AHAS), the Alabama Trucking Association and the ADPS. The eight comments supporting the preemption petition included four from motor carriers, and one each from an owner-operator, ATA, an Alabama aluminum coil producer and the Owner-Operators Independent Drivers Association (OOIDA).

Commenters opposing the petition stated that the Act is appropriate because there is a lack of Federal enforcement of training requirements; cargo load securement is a leading cause of crashes; and there have not been any metal coil spills in Alabama since the Act was enacted. Commenters supporting the petition stated that the Act should be preempted because it is simply an administrative requirement and does not have safety benefits; it imposes costs on the motor carrier and metal coil industries; it is likely to lead to a proliferation of other State requirements with burdensome cumulative effects; it unfairly affects less-than-truckload (LTL) carriers; and safety risks other than improper load securement (such as excessive speed at a crash-prone Interstate highway junction) are contributing factors to the coil spills cited as justification for the Act.

Decision

The Agency concludes that the Act does not meet the standards set forth in 49 U.S.C. 31141 and may not be enforced. The Act imposes certification requirements on interstate CMV drivers that are not required under FMCSA's regulations. As a result, and as the ADPS has acknowledged, the Act imposes requirements more stringent than those imposed by Federal law. The only remaining issue, therefore, is whether the Act (1) Has a safety benefit; (2) is incompatible with FMCSA's regulations; or (3) would cause an unreasonable burden on interstate commerce. The Agency concludes that there is insufficient support for the claimed safety benefits and that the Act places an unreasonable burden on interstate commerce.

Although several commenters argued that the Act's requirements have safety benefits, the only evidence presented—by ADPS—was a paper showing that there were eight metal coil spills in Jefferson County (i.e., the Birmingham area) in the three years prior to adoption of the Act and apparently none thereafter. ADPS implied that there was a correlation between reduced crashes and the adoption of the Act, but that is easier to assume than to demonstrate. For example, other commenters observed that the majority of the metal coil spills that occurred in Alabama were at ''Malfunction Junction,'' a particularly dangerous Interstate highway junction in Birmingham, and that speed was a factor in many of these spills. They also commented that in 2007, the State reduced the speed limit at this junction in an effort to reduce crashes. Crashes typically have multiple causes; determining the ''basic'' cause is therefore difficult, if not impossible. Identifying the reason or reasons for a *reduction* in crashes is even more problematic, especially when the annual number of incidents—like those involving metal coils in Alabama—is small enough to be affected significantly by random variations. Given the variety of factors that may have contributed both to the occurrence of and reduction in metal coil spills, attributing the reduction to a single piece of legislation is unwarranted.

In addition, the Act's requirements are largely administrative; Alabama does not test a driver's skills in securing a load. As one commenter observed, in the case of the on-line certification option, there is no way of determining whether the person taking the test is even the driver being certified. In the case of motor carrier certification option, individual drivers are not tested; the motor carrier simply certifies that its drivers have been trained in the Federal regulations. In either case, all the driver or motor carrier is required to do is demonstrate knowledge of Federal regulations—knowledge the driver is required to have in any case. (*See* 49 CFR 390.3(e)(1)–(2)). In short, the Act imposes costs on interstate carriers and drivers that are not commensurate with any readily identifiable safety benefits.

Moreover, not preempting the Act could have wide-ranging implications. For example, an individual driver commented that he was required to obtain an Alabama Metal Coil Certificate before being hired by a Minnesota-based motor carrier. Although the carrier did not haul coils into or out of Alabama, it apparently wanted to be prepared to handle that kind of business should the opportunity arise. Similarly, two LTL motor carriers stated that, because of the nature of their business, they would require all drivers to obtain an Alabama Metal Coil Certificate to cover the

possibility that a driver would be asked to transport a load of metal coils in or out of Alabama at some point during their employment. The ripple effect of the Act in imposing both potential burdens and costs beyond dedicated metal-coil transporters is extensive.

Finally, the cumulative effect of multiple States requiring their own metal-coil certifications, each with an associated fee, would create an even more unreasonable burden on interstate commerce. Several commenters noted that other States have metal coil certification requirements, but that they apply only to intrastate operations. If these and other States extended their metal coil certification requirements to interstate carriers, the effect would be a patchwork of requirements, with accompanying burdens and costs.

Conclusion

Accordingly, FMCSA grants ATA's petition for preemption. Alabama may no longer enforce the Act on interstate motor carriers.

Issued on: February 27, 2013.

Anne S. Ferro,

Administrator.

[FR Doc. 2013–05114 Filed 3–4–13; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2013–0023]

Qualification of Drivers; Exemption Applications; Vision

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

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 3 individuals for exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. They are unable to meet the vision requirement in one eye for various reasons. The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision requirement in one eye. If granted, the exemptions would enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce.

DATES: Comments must be received on or before April 4, 2013.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2013–0023 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on December 29, 2010 (75 FR 82132), or you may visit *http://www.gpo.gov/fdsys/pkg/FR-2010-12-29/pdf/2010-32876.pdf.*

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' FMCSA can renew exemptions at the end of each 2-year period. The 3 individuals listed in this notice have each requested such an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

Qualifications of Applicants

David Doub

Mr. Doub, 68, has had a retinal detachment in his right eye since 2009. The visual acuity in his right eye is 20/400, and in his left eye, 20/20. Following an examination in 2012, his ophthalmologist noted, ''Has sufficient vision left eye to operate commercial vehicle.'' Mr. Doub reported that he has driven tractor-trailer combinations for 31 years, accumulating 621,000 miles. He holds an operator's license from Indiana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Gregory S. Engleman

Mr. Engleman, 43, has had optic neuritis in his right eye since 2001. The visual acuity in his right eye is 20/200, and in his left eye, 20/20. Following an examination in 2012, his optometrist noted, ''It is my opinion that Mr. Engleman has sufficient vision to operate a commercial vehicle.'' Mr. Engleman reported that he has driven straight trucks for 7 years, accumulating 245,000 miles, tractor-trailer combinations for 19 years, accumulating 2.1 million miles. He holds a Class D Commercial Driver's License (CDL) from Kentucky. His driving record for the last 3 years shows no crashes but one conviction for moving violations in a CMV; he violated the 14 hour rule.

Gale Smith

Mr. Smith, age 45, has a prosthetic left eye due to a traumatic incident during childhood. The best corrected visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2013, his

optometrist noted, ''He is of no danger to drive a commercial vehicle from an ocular standpoint and is certified by me to meet all standards for a commercial driver's license.'' Mr. Smith reported that he has driven tractor-trailer combinations for 16 years, accumulating 1.6 million miles. He holds a Class A CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. The Agency will consider all comments received before the close of business April 4, 2013. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable.

In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: February 27, 2013.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2013–05084 Filed 3–4–13; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2013–0013]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

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

ACTION: Notice of applications for exemption from the diabetes mellitus requirement; request for comments.

SUMMARY: FMCSA announces receipt of applications from 25 individuals for exemption from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate CMVs in interstate commerce.

DATES: Comments must be received on or before April 4, 2013.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2013–0013 using any of the following methods:

- *Federal eRulemaking Portal: Go to http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on December 29, 2010 (75 FR 82132), or you may visit *http://www.gpo.gov/fdsys/pkg/FR-2010-12-29/pdf/2010-32876.pdf.*

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. The 25 individuals listed in this notice have recently requested such an exemption from the diabetes prohibition in 49 CFR 391.41(b)(3), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by the statutes.

Qualifications of Applicants

Christopher R. Anderson

Mr. Anderson, 49, has had ITDM since 1995. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Anderson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Anderson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2013 and certified that he has stable non-proliferative diabetic retinopathy. He holds a Class D operator's license from Minnesota.

Brent T. Applebury

Mr. Applebury, 25, has had ITDM since 2006. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the

last 5 years. His endocrinologist certifies that Mr. Applebury understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Applebury meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class E operator's license from Missouri.

Joseph A. Auchterlonie

Mr. Auchterlonie, 57, has had ITDM since 2010. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Auchterlonie understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Auchterlonie meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class B Commercial Driver's License (CDL) from New Hampshire.

Brett D. Bertagnolli

Mr. Bertagnolli, 23, has had ITDM since 2006. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Bertagnolli understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bertagnoli meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class A Chauffeur License from Indiana.

Brian T. Bofenkamp

Mr. Bofenkamp, 54, has had ITDM since 1984. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Bofenkamp understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bofenkamp meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2013 and certified that he has stable nonproliferative diabetic retinopathy. He holds a CDL from Washington.

Scott A. Carlson

Mr. Carlson, 46, has had ITDM since 2012. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Carlson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Carlson meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Pennsylvania.

Craig L. Falck

Mr. Falck, 50, has had ITDM since 2006. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Falck understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Falck meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Wisconsin.

John Fityere

Mr. Fityere, 57, has had ITDM since 2007. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Fityere understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Fityere meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New Jersey.

Dana R. Griswold

Mr. Griswold, 52, has had ITDM since 1986. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Griswold understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Griswold meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Vermont.

Ronald A. Heaps

Mr. Heaps, 45, has had ITDM since 2007. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Heaps understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Heaps meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Ohio.

Martin A. Houts

Mr. Houts, 35, has had ITDM since 2004. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or

resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Houts understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Houts meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Iowa.

Michael T. Kraft

Mr. Kraft, 55, has had ITDM since 2012. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Kraft understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kraft meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

Kris W. Lindsay

Mr. Lindsay, 40, has had ITDM since 2012. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Lindsay understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Lindsay meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Kansas.

Edward M. Luczynski

Mr. Lucynski, 23, has had ITDM since 1996. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Lucynski understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Lucynski meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from New Jersey.

Wendell J. Matthews

Mr. Matthews, 51, has had ITDM since 2010. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Matthews understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Matthews meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he has stable non-proliferative diabetic retinopathy. He holds a Class E operator's license from Missouri.

Patric L. Patten

Mr. Patten, 37, has had ITDM since 2012. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Patten understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Patten meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New Hampshire.

Darryl G. Rockwell

Mr. Rockwell, 48, has had ITDM since 2008. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Rockwell understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Rockwell meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Texas.

John E. Ruth

Mr. Ruth, 56, has had ITDM since 2007. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Ruth understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Ruth meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Illinois.

Greggory A. Smith

Mr. Smith, 51, has had ITDM since 2012. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Smith understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Smith meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Missouri.

Dwight E. Sory

Mr. Sory, 58, has had ITDM since 2007. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting

in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Sory understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Sory meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Colorado.

James M. Torkildson

Mr. Torkildson, 60, has had ITDM since 2012. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Torkildson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Torkildson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Wisconsin.

Terry R. Washa

Mr. Washa, 52, has had ITDM since 2007. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Washa understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Washa meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Nebraska.

Alfred J. Williams

Mr. Williams, 55, has had ITDM since 2012. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Williams understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Williams meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Virginia.

Scott B. Wood

Mr. Wood, 50, has had ITDM since 2012. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Wood understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wood meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from North Dakota.

James L. Zore

Mr. Zore, 75, has had ITDM since 2003. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Zore understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Zore meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Indiana.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the date section of the notice.

FMCSA notes that section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441).[1] The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) Elimination of the requirement for 3 years of experience operating CMVs while being treated with insulin; and (2) establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 U.S.C. 31136(e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary.

The FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 notice, except as modified by the notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

Issued on: February 26, 2013.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2013–05087 Filed 3–4–13; 8:45 am]

BILLING CODE P

[1] Section 4129(a) refers to the 2003 notice as a ''final rule.'' However, the 2003 notice did not issue a ''final rule'' but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2000–7918; FMCSA–2002–12844; FMCSA–2004–19477; FMCSA–2005–20027; FMCSA–2007–27897; FMCSA–2008–0266; FMCSA–2010–0413]

Qualification of Drivers; Exemption Applications; Vision

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

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 12 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective April 1, 2013. Comments must be received on or before April 4, 2013.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) numbers: [Docket No. FMCSA–2000–7918; FMCSA–2002–12844; FMCSA–2004–19477; FMCSA–2005–20027; FMCSA–2007–27897; FMCSA–2008–0266; FMCSA–2010–0413] using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on December 29, 2010 (75 FR 82132), or you may visit *http://www.gpo.gov/fdsys/pkg/FR-2010-12-29/pdf/2010-32876.pdf.*

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 12 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 12 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

David F. Breuer (WI)
Todd A. Chapman (NC)
Joseph A. Dean (AR)
Daniel L. Jacobs (AZ)
Jimmy C. Killian (NC)
Jose M. Limon-Alvarado (WA)
Joe L. Meredith, Jr. (VA)
John W. Montgomery (MA)
Robert A. Moss (MO)
Steve A. Reece (TN)
Elvis E. Rogers, Jr. (TX)
Artis Suitt (NC)

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 12 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (65 FR 66286; 66 FR 13825; 67 FR 68719; 68 FR 2629; 68 FR 13360; 69 FR 64806; 70 FR 12265; 70 FR 16887; 70 FR 2701; 70 FR 2705; 72 FR 1056; 72 FR 11425; 72 FR 11426; 72 FR 39879; 72 FR 52419; 73 FR 51689; 73 FR 63047; 73 FR 76440; 74 FR 8302; 74 FR 8842; 75 FR 66423; 75 FR 80887; 76 FR 12215; 76 FR 12216; 76 FR 12408; 76 FR

1493). Each of these 12 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the requirement specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption requirements.

These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by April 4, 2013.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 12 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: February 27, 2013.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2013–05096 Filed 3–4–13; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Notice of Proposed Policy Clarification Concerning Designation of Adjacent Coastal States for Deepwater Port License Applications

AGENCY: Maritime Administration, DOT.

ACTION: Notice of proposed policy clarification.

SUMMARY: The Maritime Administration (''MarAd'') is seeking comments on a proposed policy clarification for deepwater port license applications. Specifically, nautical miles shall be applied when designating Adjacent Coastal States under 33 U.S.C. 1508(a)(1).

DATES: Written public comments regarding this MarAd policy clarification shall be submitted by April 4, 2013.

ADDRESSES: The public docket for USCG–2012–0927 is maintained by the: Department of Transportation, Docket Management Facility, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

The Federal Docket Management Facility accepts hand-delivered submissions and makes docket contents available for public inspection and copying at this address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Facility telephone number is 202–366–9329, the fax number is 202–493–2251, and the Web site for electronic submissions or for electronic access to docket contents is *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Yvette Fields, Maritime Administration, at (202) 366–0926 or *Yvette.Fields@dot.gov.* If you have questions regarding viewing the Docket, contact Renee V. Wright, Program Manager, Docket Operations, at (202) 493–0402.

SUPPLEMENTARY INFORMATION: MarAd has reviewed policies and practices with regard to designation of Adjacent Coastal States (''ACS'') in the deepwater port application licensing process. In past applications and public notices, MarAd found inconsistency in the use of units of distance in describing the distance between proposed deepwater ports and ACS.

Under 33 U.S.C. 1508(a)(1), when issuing a Notice of Application, MarAd, as designated by the Secretary of Transportation, shall designate as an ACS ''any coastal State which (A) would be directly connected by pipeline to a deepwater port as proposed in an application, or (B) would be located within 15 miles of any such proposed deepwater port.'' In general, in its publications, MarAd adopted the units of measurement provided by the deepwater port license applicants in their description of their proposed deepwater ports. At different times, MarAd used statute miles (approximately .87 nautical miles) or nautical miles (approximately 1.15 statute miles) in describing the location of deepwater ports in its publications.

Due to the configuration and the physical location of proposed deepwater port projects in prior applications, the use of statute or nautical miles did not impact the designation of an ACS, since these projects were either connected to the ACS directly by pipeline, or were within both 15 statute and 15 nautical miles from those states. As a result, MarAd was not required to clarify which unit of measurement is the appropriate distance standard to apply when designating an ACS in Notices of Application. For proposed deepwater port locations where the chosen distance standard is significant to the designation of ACS (applications where the port location falls between 15 statute and 15 nautical miles of a potential ACS), however, clarification of the standard measure is necessary. For the sake of clarity in such instances, MarAd is issuing this notice of proposed policy clarification that nautical miles shall be applied when designating ACS under 33 U.S.C. 1508(a)(1).

The Deepwater Port Act (''DWPA'' or the ''Act'') (33 U.S.C. 1501 *et seq.*) authorizes the Secretary of Transportation to issue licenses for the construction and operation of deepwater ports.[1] A deepwater port is defined in Section 1502 of the Act as ''any fixed or floating manmade structure other than a vessel, or any group of such structures, that are located beyond State seaward boundaries and that are used or intended for use as a port or terminal for

[1] The Secretary of Transportation delegated to the Maritime Administrator the authority to ''issue, transfer, amend, or reinstate a license for the construction and operation of a deepwater port.'' 49 CFR 1.93(h)(1).

the transportation, storage, or further handling of oil or natural gas for transportation to any State * * * .'' [2] Deepwater ports include ''all components and equipment, including pipelines * * * to the extent they are located seaward of the high water mark.'' [3] The DWPA provides for a mandatory designation of State(s) as ''Adjacent Coastal State(s)'' (''ACS'') if certain criteria are met. Those criteria are if the ACS: (1) Would be ''directly connected by pipeline to a deepwater port,'' or (2) ''would be located within 15 miles of any such proposed deepwater port.'' [4] The DWPA does not specify whether the 15 mile geographical limit for the automatic designation of an ACS should be marked in statute miles [5] or nautical miles.[6]

Congress did not specify how the 15 mile distance should be measured. Nevertheless, an examination of the entire statute and legislative history leads to the conclusion that Congress intended that for these purposes, where units of distance measurement are not specified as statute miles or nautical miles, those units of measurement should be read in terms of generally accepted nautical standards (i.e., nautical miles).

In enacting the DWPA, Congress declared its purpose to be, among other things, to: ''(1) authorize and regulate the location, ownership, construction, and operation of deepwater ports in waters beyond the territorial limits of the United States; [and] (2) provide for the protection of the marine and coastal environment to prevent or minimize any adverse impact which might occur as a consequence of the development of such ports.'' [7] The Act defines the term ''coastal environment'' in relevant part as: ''the navigable waters (including the lands therein and thereunder) and the adjacent shorelines (including waters therein and thereunder).[8] The term ''marine environment'' is defined as including: ''the coastal environment, waters of the contiguous zone, and waters of the high seas.'' [9]

The DWPA does not provide further definition of the terms ''territorial limits,'' ''navigable waters (including the lands therein and thereunder),'' or ''contiguous zone.'' However, these jurisdictional boundaries have well accepted meanings both in international law and United States law and help clarify how the 15 mile jurisdictional area for automatic designation of an ACS should be measured. Article 1 of the Convention on the Territorial Sea and the Contiguous Zone establishes that a Coastal State's sovereignty extends ''beyond its land territory and internal waters, to a belt of sea adjacent to its coast, described as a territorial sea.'' [10] Article 24 of the treaty also establishes that a Coastal State may exercise certain authorities in a ''zone of the high seas contiguous to its territorial sea . * * *'' [11] For purposes of the Treaty, both the Territorial Sea and the Contiguous Zone are measured from the ''baseline,'' normally the mean low water line along the coast of the United States. The United Nations Convention on the Law of the Sea (''UNCLOS'') further clarifies the breadth of a Coastal State's jurisdiction in its Territorial Sea and Contiguous Zone by establishing a seaward limit of ''12 nautical miles'' and ''24 nautical miles'' respectively.[12] Although the United States has not ratified UNCLOS, it has adopted the jurisdictional areas referenced in UNCLOS. In establishing its territorial limits, the United States has uniformly applied the international standard and used nautical miles as the unit of measurement.[13]

The Submerged Lands Act (''SLA'') was enacted in 1953.[14] Its purpose was to ''confirm and establish the titles of the States to lands beneath navigable waters within State boundaries and to the natural resources within such lands and waters, to provide for the use and control of said lands and resources, and to confirm the jurisdiction and control of the United States over the natural resources of the seabed of the Continental Shelf seaward of State boundaries.'' [15] The SLA defines the term ''boundaries'' in relevant part to include: ''the seaward boundaries of a State * * * but in no event shall the term 'boundaries' be interpreted as extending from the coast line more than three geographical miles into the Atlantic Ocean or the Pacific Ocean, or more than three marine leagues into the Gulf of Mexico.'' [16] The SLA also provides that ''[t]he seaward boundary of each original coastal State is hereby approved and confirmed as a line three geographical miles distant from its coast line * * * .'' [17] In the case of United States v. California, the Supreme Court considered the extent of submerged lands granted to the State of California by the SLA. After reviewing the SLA and its legislative history, the Court concluded that the SLA ''effectively grants each State on the Pacific coast all submerged lands shoreward of a line three geographical miles from its coast line * * * .'' [18] The Court further explained that ''one English, statute, or land mile equals approximately .87 geographical, marine, or nautical mile. The conventional '3-mile limit' under international law refers to three geographical miles, or approximately 3.45 land miles.'' [19]

In defining the term ''coastal environment,'' the DWPA explicitly refers to ''navigable waters (including the lands therein and thereunder).'' [20] This definition is similar to what is found in the SLA's statement of purpose (''lands beneath navigable waters within State boundaries''). As noted above, the SLA confers upon States title to, and ownership of, the ''lands beneath navigable waters within their boundaries,'' and applies geographical (nautical) miles for that purpose.

The legislative history of the DWPA reveals that Congress viewed ACS status as a jurisdictional issue. For example, in the Conference Report to the DWPA, the State's role in approving a deepwater port is discussed in terms of the three-mile limit which is measured in nautical miles. Congress recognized that ''under the Submerged Lands Act * * * the States have either exclusive or concurrent authority with the Federal government over most activities within the 3-mile limit,'' [21] which is measured in geographical (nautical) miles. Moreover, the Senate Report noted, a Coastal State's jurisdiction would end at the State's three-nautical mile seaward boundary and the State would have no authority over the offshore activity.

[2] 33 U.S.C. 1502(9)(A).

[3] Id. at § 1502(9)(B).

[4] Id. at § 1502(1)(A)&(B). The Act also provides for a permissive designation of an ACS if, upon petition and provision of evidence, the Maritime Administrator determines that ''there is a risk of damage to the coastal environment of such State equal to or greater than the risk posed to a State directly connected by pipeline to the proposed deepwater port.'' 33 U.S.C. 1508(a)(2).

[5] One statute mile equals 5280 feet.

[6] One nautical mile equals 6076 feet.

[7] 33 U.S.C. 1501(1)&(2).

[8] Id. at § 1502(5).

[9] Id. at § 1502(12).

[10] 15 U.S.T. 1606. This treaty was ratified by the United States on March 24, 1961, and entered into force on September 10, 1964.

[11] Id.

[12] UNCLOS Part II, Article 2 and Article 33.

[13] See, e.g., Presidential Proclamation No. 5928 of December 27, 1998: ''The territorial sea of the United States henceforth extends to 12 nautical miles from the baselines of the United States determined in accordance with international law.''

[14] 67 Stat. 29.

[15] Id.

[16] 43 U.S.C. 1301(b).

[17] Id. at § 1312.

[18] *U.S.* v. *California,* 381 U.S. 139 at 148 (May 17, 1965).

[19] Id. at Fn. 8.

[20] See Fn. 16 supra.

[21] 1974 U.S.C.C.A.N. 7529 at 7538.

Consistent with Congress' view of ACS status as a jurisdictional issue, the use of nautical miles to determine ACS status allows for an extension of the State's jurisdiction to be measured consistently with the measures of jurisdiction required by law. Absent this interpretation, a State's jurisdiction that is measured in nautical miles would then subsequently be extended by Congress under a different unit of measurement.

In addition to the legislative history, the regulatory history of the Deepwater Ports program provides additional support for interpreting the DWPA to apply nautical miles to ACS designations. The original Final Rule in 33 CFR part 148 published on November 10, 1975, defined mile for the purposes of the regulations as a nautical mile.[22] Though the definition for ''mile'' was subsequently removed in a May 20, 2003, Notice of Proposed Rulemaking and does not appear in the Final Rule published on September 29, 2006, 33 CFR part 2 indicates that nautical miles are the appropriate units of measurement to be employed for determining United States Coast Guard jurisdictional definitions where such jurisdictional definitions are not otherwise provided.[23]

As a result of its interpretation of the DWPA, its legislative history, and implementing regulations, MarAd proposes to apply nautical miles when designating ACS in future Notices of Application under 33 U.S.C. 1508(a)(1).

Request for Comments

MarAd is seeking comment on the proposed policy clarification and invites interested parties to visit its Web site for background information. MarAd will consider comments in formulating a final notice of policy clarification.

Dated: February 28, 2013.

By Order of the Maritime Administrator.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2013–05007 Filed 3–4–13; 8:45 am]

BILLING CODE 4910–81–P

[22] 40 FR 52401 (Nov. 10, 1975).

[23] See 33 CFR 2.1(a) (''The purpose of this part is to define terms the U. S. Coast Guard uses in regulations, policies, and procedures, to determine whether it has jurisdiction on certain waters where specific jurisdictional definitions are not otherwise provided.'').

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2013 0019]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel LUCKY DUCK; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before April 4, 2013.

ADDRESSES: Comments should refer to docket number MARAD–2013–0019. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov.*

SUPPLEMENTARY INFORMATION:

As described by the applicant the intended service of the vessel LUCKY DUCK is:

Intended Commercial Use Of Vessel: ''The vessel is to be operated as a sailing instruction vessel with a licensed captain and no more than six passengers in San Francisco Bay and outside the Golden Gate. The course will be three days long, with the students living aboard and sailing to different areas of the Bay each day. There will be no more than ten courses offered in a calendar year. This program is being offered to local residents in Orange County, Calif.''

Geographic Region: ''California''.

The complete application is given in DOT docket MARAD–2013–0019 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: February 26, 2013.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2013–05061 Filed 3–4–13; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2013 0018]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel LILYANNA; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build

requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before April 4, 2013.

ADDRESSES: Comments should refer to docket number MARAD–2013–0018. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel LILYANNA is:

Intended Commercial Use of Vessel: 2 Hour Sunset Sails, and 3 Hour Day Sails at Little Palm Island Resort.

Geographic Region: Florida.

The complete application is given in DOT docket MARAD–2013–0018 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: February 26, 2013.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2013–05038 Filed 3–4–13; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 290 (Sub-No. 335X; Docket No. AB 290 (Sub-No. 340X]

The Alabama Great Southern Railroad Company—Abandonment Exemption—in Gadsden, Etowah County, Ala.; Tennessee, Alabama, and Georgia Railway Company—Abandonment Exemption—in Gadsden, Etowah County, AL

The Alabama Great Southern Railroad Company (AGS) and Tennessee, Alabama, and Georgia Railway Company (TAG) (collectively, applicants) [1] have jointly filed a verified notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments* for AGS and TAG to abandon service over approximately 4.25 miles of interconnected rail line in Gadsden, Etowah County, Ala. Specifically, AGS proposes to: (1) Abandon 3.10 miles of rail line (the AGS segment) between milepost 2.40 AG (near Cabot Ave.) and milepost 5.50 AG (near the intersection of River and Coosa Streets); and (2) TAG proposes to abandon approximately 1.15 miles of rail line (the TAG segment) between milepost TA 90.30 (located between the north end of Brookside Drive and Owls Hollow Road) and milepost TA 91.45 (at TAG Segment's connection with the AGS Segment west of N 5th Street) (the Line). The Line traverses United States Postal Service Zip Codes 35901 and 35904.

Applicants have certified that: (1) No local traffic has moved over the Line for at least two years; (2) no overhead traffic has moved over the Line for at least two years and overhead traffic, if there were any, could be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the two-year period; and (4) the requirements at 49 CFR 1105.7(c) (environmental report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to these exemptions, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, these exemptions will be effective on April 4, 2013, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by March 15, 2013. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by March 25, 2013, with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to applicants' representative: Robert A. Wimbish, Baker & Miller PLLC, 2401 Pennsylvania Ave. NW., Suite 300, Washington, DC 20037.

If the verified notice contains false or misleading information, the exemptions are void *ab initio.*

Applicants have filed a combined environmental and historic report that

[1] Both applicants are wholly-owned subsidiaries of the Norfolk Southern Railway Company.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemptions' effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemptions' effective date.

[3] Each OFA must be accompanied by the filing fee, which is currently set at $1,600. *See* 49 CFR 1002.2(f)(25).

addresses the effects, if any, of the abandonment on the environment and historic resources. OEA will issue an environmental assessment (EA) by March 8, 2013. Interested persons may obtain a copy of the EA by writing to OEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling OEA, at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), applicants shall jointly file a notice of consummation with the Board to signify that each has exercised the authority granted and fully abandoned its portion of the Line. If consummation has not been effected by applicants' filing of a notice of consummation by March 5, 2014, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *www.stb.dot.gov*.

Decided: February 28, 2013.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Derrick A. Gardner,

Clearance Clerk.

[FR Doc. 2013–05043 Filed 3–4–13; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Publication of Fiscal Year 2012 Service Contract Inventory Analysis

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of publication of Fiscal Year 2012 Service Contract Inventory: Analysis of the FY 2012 Inventory and Planned Analysis of 2013.

SUMMARY: The Department of the Treasury will make available to the public at *http://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-the-Procurement-Executive.aspx* (see Key Topics) the Department's Fiscal Year (FY) 2012 Service Contract Inventory analysis. The analysis discusses Treasury initiatives in court reporters and transcription services for 2012. In 2013, Treasury seeks to determine if its mix of Federal/contractor employees dedicated to Government Performance and Results Act goals is effective or if rebalancing is required.

FOR FURTHER INFORMATION CONTACT: Jim Sullivan Office of the Deputy Assistant Secretary for Human Resources and Chief Human Capital Officer Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220, at (202) 622–9395 or *james.sullivan@treasury.gov.*

SUPPLEMENTARY INFORMATION: In accordance with Section 743 of Division C of the FY 2010 Consolidated Appropriations Act, Public Law (Pub. L.) 111–117, agencies required to submit an inventory in accordance with the Federal Activities Inventory Reform Act of 1998 (Pub. L. 105–270; 31 U.S.C. 501 note), other than the Department of the Defense, shall also prepare an annual service contract inventory. Treasury submitted its inventory for FY 2012 to the Office of Management and Budget (OMB) on December 18, 2012.

Dated: February 11, 2013.

Anita Blair,

Deputy Assistant Secretary for Human Resources and Chief Human Capital Officer.

[FR Doc. 2013–05065 Filed 3–4–13; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Agency Information Collection Activities; Comment Request of the Proposed Changes to the Report of Foreign Bank and Financial Accounts Report

AGENCY: Financial Crimes Enforcement Network (''FinCEN''), Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: FinCEN, a bureau of the U.S. Department of the Treasury, invites all interested parties to comment on its proposed update to Form TD F 90–22.1, Report of Foreign Bank and Financial Accounts (''FBAR''). This request for comments is made pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

DATES: Written comments should be received on or before May 6, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to: Regulatory Policy and Programs Division, Financial Crimes Enforcement Network, U.S. Department of the Treasury, P.O. Box 39, Vienna, VA 22183, Attention: PRA Comments—Update to the FBAR report. Comments also may be submitted by electronic mail to the following Internet address: ''*regcomments@fincen.gov*'' with the caption in the body of the text, ''Attention: PRA Comments— Update to the FBAR report.''

Inspection of Comments: Comments may be inspected, between 10 a.m. and 4 p.m., in the FinCEN reading room in Vienna, VA. Persons wishing to inspect the comments submitted must request an appointment with the Disclosure Officer by telephoning (703) 905–5034 (not a toll free call).

FOR FURTHER INFORMATION CONTACT: Financial Crimes Enforcement Network, Regulatory Policy and Programs Division at (800) 949–2732. A copy of Form TD F 90–22.1 reflecting the proposed changes may be found at the end of this notice.

SUPPLEMENTARY INFORMATION: *Abstract:* The statute generally referred to as the ''Bank Secrecy Act'' (''BSA''), Titles I and II of Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5314 and 5316–5332, authorizes the Secretary of the Treasury, *inter alia,* to require financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities to protect against international terrorism, and to implement counter-money laundering programs and compliance procedures.[1] Regulations implementing Title II of the BSA appear at 31 CFR Chapter X. The authority of the Secretary to administer the BSA has been delegated to the Director of FinCEN.

The information collected on Form TD F 90–22.1 (as well as other BSA reporting and recordkeeping requirements that are not the subject of this notice) assist Federal, state, and local law enforcement in the identification, investigation, and prosecution of individuals involved in money laundering, the financing of terrorism, tax evasion, narcotics trafficking, organized crime, fraud, embezzlement, and other crimes. The information also assists in tax

[1] Language expanding the scope of the Bank Secrecy Act to intelligence or counter-intelligence activities to protect against international terrorism was added by Section 358 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the ''USA PATRIOT Act''), P.L. 107–56.

collection, examination, and other regulatory matters.[2]

Current Action: FinCEN is proposing to update the current TD F 90–22.1 report to standardize it with other BSA electronically filed reports and add the capability for a third party preparer to file the report should the owner of the foreign account wish to employ this option. To standardize the FBAR with other BSA reports, FinCEN proposes to add an item to record taxpayer identification number (''TIN'') Type to Part I, item 3a; Part I, item 4; Part III, item 25a; Part IV, item 35a; and V, item 35a. The addition of a check box to indicate that the amount is unknown is added to Parts II, III, IV, and V in item 15a. FinCEN also proposes to add a new item ''Suffix'' to Part I, item 8a; Part III, item 28a; and Part IV, item 37a. This update includes a revised signature section. It adds item 44a, a check box with the instruction ''*Check here [box for checking] if this report is completed by a 3rd party preparer and complete item 46 and the third party preparer section.*'' [3] A new section, ''*3rd Party Preparer Use Only,*'' is added to the report to support this method of filing. The 3rd Party Preparer section consists of the preparer's last name, first name, and middle initial (items 47, 48, and 49); preparer's signature (item 50); a check box to indicate if the preparer is self-employed (item 51); the preparer's TIN and TIN Type (items 52 and 52a); and a contact telephone number and extension, if applicable, (items 53 and 53a). If the preparer is an employee of a firm, the firm's name and employer identification number (''EIN'') are entered in items 54 and 55. Finally, the address (street number, city, state, ZIP/Postal Code, and country) of the preparer (if self-employed) or the firm is entered in items 56 through 60.[4]

Title: Reports of foreign financial accounts (31 CFR 1010.350).

OMB Control Number: 1506–0009 (The IRS's OMB control number is 1545–2038).

Current Action: There is no change to the existing regulations.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals, businesses or for-profit institutions, and non-profit institutions.

Estimate Number of Affected Filing Individuals and Entities: 780,000.[5]

Estimated Recordkeeping and Reporting Burden: Based on past filings, 30 minutes for recordkeeping and 45 minutes for report completion for a total filing burden of 1 hour and fifteen minutes (1:15).

Estimated Annual Recordkeeping and Reporting Burden Hours: 975,000.[6]

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Records required to be retained under the BSA must be retained for five years. Generally, information collected pursuant to the BSA is confidential, but it may be shared as provided by law with regulatory and law enforcement authorities.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: February 26, 2013.

Jennifer Shasky Calvery,

Director, Financial Crimes Enforcement Network.

BILLING CODE 4810–02–P

[2] The information collection addressed in this notice is currently approved under Office of Management and Budget (''OMB'') Control Number 1506–0009.

[3] The date in item 46 will be entered automatically if the FBAR is filed through the BSA E-Filing Discrete (single report) Option. If the FBAR is batch filed, the date must be manually entered in the batch filing specifications' 2a Record.

[4] If a third party preparer completes and files the report, the report will be signed in item 50. If the report is completed and filed by the owner of the foreign account, the report will be signed in the signature section, item 44.

[5] This figure reflects the actual number of FBAR filings in calendar year 2012.

[6] 780,000 reports × 1.25 hours per report = 975,000 hours.

TD F 90-22.1
(Rev. September 2013)
Department of the Treasury
OMB No. 1506-0009
Do not use previous editions of this form

REPORT OF FOREIGN BANK AND FINANCIAL ACCOUNTS

Do NOT file with your Federal Tax Return

OMB No. 1545-2038
1 This Report is for Calendar Year Ended 12/31
Amended ☐

Part I Filer Information

2 Type of Filer
a ☐ Individual b ☐ Partnership c ☐ Corporation d ☐ Consolidated e ☐ Fiduciary or Other - Enter type _____

3 U.S. Taxpayer Identification Number	3a TIN type	4 Foreign identification (Complete only if item 3 is not applicable)	5 Individual's Date of Birth MM/DD/YYYY
If filer has no U.S. Identification Number complete item 4.	☐ SSN/ITIN ☐ EIN	a Type: ☐ Passport ☐ Foreign TIN ☐ Other _____ b Number c Country of Issue	

6 Last Name or Organization Nam	7 First Name	8 Middle Initial	8a Suffix

9 Address (Number, Street, and Apt. or Suite No.)

10 City	11 State	12 Zip/Postal Code	13 Country

14 Does the filer have a financial interest in 25 or more financial accounts?
☐ Yes If "Yes" enter total number of accounts _____
(If "Yes" is checked, do not complete Part II or Part III, but retain records of this information)
☐ No

Part II Information on Financial Account(s) Owned Separately

15 Maximum value of account during calendar year reported	15a Amount Unknown ☐	16 Type of account a ☐ Bank b ☐ Securities c ☐ Other—Enter type below

17 Name of Financial Institution in which account is held

18 Account number or other designation	19 Mailing Address (Number, Street, Suite Number) of financial institution in which account is held		
20 City	21 State, if known	22 Zip/Postal Code, if known	23 Country

Signature

44a Check here ☐ if this report is completed by a 3rd party preparer and complete item 46 and the 3rd party preparer section.

44 Filer Signature	45 Filer Title, if not reporting a personal account	46 Date (MM/DD/YYYY)

3rd Party Preparer Use Only

47 Preparer's last name	48 First name	49 MI	50 Preparer's signature	51 Check ☐ if self-employed	52 TIN
52a TIN type ☐ PTIN ☐ SSN/ITIN ☐ Foreign	53 Contact phone no.	53a Ext.	54 Firm's name		55 Firm's EIN
56 Address (Number, Street, Suite Number)	57 City	58 State	59 Zip/Postal Code		60 Country

This form should be used to report a financial interest in, signature authority, or other authority over one or more financial accounts in foreign countries, as required by the Department of the Treasury Regulations 31 CFR 1010.350. No report is required if the aggregate value of the accounts did not exceed $10,000. See Instructions For Definitions.

PRIVACY ACT AND PAPERWORK REDUCTION ACT NOTICE

Pursuant to the requirements of Public Law 93-579 (Privacy Act of 1974), notice is hereby given that the authority to collect information on TD F90-22.1 in accordance with 5 USC 552a (e) is Public Law 91-508; 31 USC 5314; 5 USC 301; 31 CFR 1010.350. The principal purpose for collecting the information is to assure maintenance of reports where such reports or records have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings. The information collected may be provided to those officers and employees of any constituent unit of the Department of the Treasury who have a need for the records in the performance of their duties. The records may be referred to any other department or agency of the United States upon the request of the head of such department or agency for use in a criminal, tax, or regulatory investigation or proceeding. The information collected may also be provided to appropriate state, local, and foreign law enforcement and regulatory personnel in the performance of their official duties. Disclosure of this information is mandatory. Civil and criminal penalties, including in certain circumstances a fine of not more than $500,000 and imprisonment of not more than five years, are provided for failure to file a report, supply information, and for filing a false or fraudulent report. Disclosure of the Social Security number is mandatory. The authority to collect is 31 CFR 1010.350. The Social Security number will be used as a means to identify the individual who files the report. The estimated average burden associated with this collection of information is 75 minutes per respondent or record keeper, depending on individual circumstances. Comments regarding the accuracy of this burden estimate, and suggestions for reducing the burden should be directed to the Internal Revenue Service, Bank Secrecy Act Policy, 5000 Ellin Road C-3-242, Lanham MD 20706.

Rev. 4.0 - 2/8/2013

Part III **Information on Financial Account(s) Owned Jointly**

Form TD F 90-22.1
Page Number
2 of 4

Complete a Separate Block for Each Account Owned Jointly

Add additional Part III page as many times as necessary in order to provide information on all accounts

1 Filing for calendar year	3-4 Check appropriate Identification Number	6 Last Name or Organization Name
— — — —	☐ Taxpayer Identification Number ☐ Foreign Identification Number Enter idnetification number here:	

15 Maximum value of account during calendar year reported	15a Amount Unknown	16 Type of account a ☐ Bank b ☐ Securities c ☐ Other—Enter type below
	☐	

17 Name of Financial Institution in which account is held			
18 Account number or other designation	19 Mailing Address (Number, Street, Suite Number) of financial institution in which account is held		
20 City	21 State, if known	22 Zip/Postal Code, if known	23 Country
24 Number of joint owners for this account	25 Taxpayer Identification Number (TIN) of principal joint owner, if known. See instructions		25a TIN Type ☐ EIN ☐ SSN/ITIN ☐ Foreign
26 Last Name or Organization Name of principal joint owner	27 First Name of principal joint owner, if known	28 Middle Initial, if known	28a Suffix
29 Address (Number, Street, Suite or Apartment) of principal joint owner, if known			
30 City, if known	31 State, if known	32 ZIP/Postal Code, if known	33 Country, if known

15 Maximum value of account during calendar year reported	15a Amount Unknown	16 Type of account a ☐ Bank b ☐ Securities c ☐ Other—Enter type below
	☐	

17 Name of Financial Institution in which account is held			
18 Account number or other designation	19 Mailing Address (Number, Street, Suite Number) of financial institution in which account is held		
20 City	21 State, if known	22 Zip/Postal Code, if known	23 Country
24 Number of joint owners for this account	25 Taxpayer Identification Number of principal joint owner, if known. See instructions		25a TIN Type ☐ EIN ☐ SSN/ITIN ☐ Foreign
26 Last Name or Organization Name of principal joint owner	27 First Name of principal joint owner, if known	28 Middle Initial, if known	28a Suffix
29 Address (Number, Street, Suite or Apartment) of principal joint owner, if known			
30 City, if known	31 State, if known	32 ZIP/Postal Code, if known	33 Country, if known

Part IV **Information on Financial Account(s) Where Filer has Signature or Other Authority but No Financial Interest in the Account(s)**

Form TD F 90-22.1
Page Number
3 of 4

Complete a Separate Block for Each Account

Add additional Part IV page as many times as necessary in order to provide information on all accounts

1. Filing for calendar year	3-4 Check appropriate Identification Number	6 Last Name or Organization Name
— — — —	☐ Taxpayer Identification Number ☐ Foreign Identification Number Enter idnetification number here:	

15 Maximum value of account during calendar year reported	15a Amount Unknown ☐	16 Type of account a ☐ Bank b ☐ Securities c ☐ Other—Enter type below

17 Name of Financial Institution in which account is held

18 Account number or other designation	19 Mailing Address (Number, Street, Suite Number) of financial institution in which account is held		
20 City	21 State, if known	22 Zip/Postal Code, if known	23 Country

34 Last Name or Organization Name of Account Owner	35 Tax Identification Number of Account Owner	35a TIN Type ☐ EIN ☐ SSN/ITIN ☐ Foreign

36 First Name	37 Middle Initial	37a Suffix	38 Address (Number, Street, and Apt. or Suite No.)		
39 City			40 State	41 ZIP/Postal Code	42 Country

43 Filer's Title with this Owner

15 Maximum value of account during calendar year reported	15a Amount Unknown ☐	16 Type of account a ☐ Bank b ☐ Securities c ☐ Other—Enter type below

17 Name of Financial Institution in which account is held

18 Account number or other designation	19 Mailing Address (Number, Street, Suite Number) of financial institution in which account is held		
20 City	21 State, if known	22 Zip/Postal Code, if known	23 Country

34 Last Name or Organization Name of Account Owner	35 Tax Identification Number of Account Owner	35a TIN Type ☐ EIN ☐ SSN/ITIN ☐ Foreign

36 First Name	37 Middle Initial	37a Suffix	38 Address (Number, Street, and Apt. or Suite No.)		
39 City			40 State	41 ZIP/Postal Code	42 Country

43 Filer's Title with this Owner

Part V **Information on Financial Account(s) Where Filer is Filing a Consolidated Report**

Form TD F 90-22.1 Page Number 4 of 4

Complete a Separate Block for Each Account

Add additional Part V page as many times as necessary in order to provide information on all accounts

1 Filing for calendar year	3-4 Check appropriate Identification Number	6 Last Name or Organization Name
— — — —	☐ Taxpayer Identification Number ☐ Foreign Identification Number Enter idnetification number here:	

15 Maximum value of account during calendar year reported	15a Amount Unknown ☐	16 Type of account a ☐ Bank b ☐ Securities c ☐ Other—Enter type below

17 Name of Financial Institution in which account is held			
18 Account number or other designation	19 Mailing Address (Number, Street, Suite Number) of financial institution in which account is held		
20 City	21 State, if known	22 Zip/Postal Code, if known	23 Country

34 Corporate Name of Account Owner	35 Tax Identification Number of Account Owner	35a TIN Type ☐ EIN ☐ SSN/ITIN ☐ Foreign

38 Address (Number, Street, and Apt. or Suite No.)			
39 City	40 State	41 ZIP/Postal Code	42 Country

15 Maximum value of account during calendar year reported	15a Amount Unknown ☐	16 Type of account a ☐ Bank b ☐ Securities c ☐ Other—Enter type below

17 Name of Financial Institution in which account is held			
18 Account number or other designation	19 Mailing Address (Number, Street, Suite Number) of financial institution in which account is held		
20 City	21 State, if known	22 Zip/Postal Code, if known	23 Country

34 Corporate Name of Account Owner	35 Tax Identification Number of Account Owner	35a TIN Type ☐ EIN ☐ SSN/ITIN ☐ Foreign

38 Address (Number, Street, and Apt. or Suite No.)			
39 City	40 State	41 ZIP/Postal Code	42 Country

[FR Doc. 2013–04936 Filed 3–4–13; 8:45 am]

BILLING CODE 4810–02–C

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Treatment of Acquisition of Certain Financial Institutions; Certain Tax Consequences of Federal Financial Assistance to Financial Institutions.

DATES: Written comments should be received on or before May 6, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Martha R. Brinson at (202) 622–3869, or *Martha.R.Brinson@irs.gov,* or Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Treatment of Acquisition of Certain Financial Institutions; Certain Tax Consequences of Federal Financial Assistance to Financial Institutions.

OMB Number: 1545–1300.

Regulation Project Number: TD 8641.

Abstract: Recipients of Federal financial assistance (FFA) must maintain an account of FFA that is deferred from inclusion in gross income and subsequently recaptured. This information is used to determine the recipient's tax liability. Also, tax not subject to collection must be reported and information must be provided if certain elections are made.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and the Federal Government.

Estimated Number of Respondents: 500.

Estimated Time per Respondent: 4 hours, 24 minutes.

Estimated Total Annual Burden Hours: 2,200.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 13, 2013.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2013–04972 Filed 3–4–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on this continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Compensation Deferred Under Eligible Deferred Compensation Plans.

DATES: Written comments should be received on or before May 6, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Martha R. Brinson at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3869, or through the Internet at *(Martha.R.Brinson@irs.gov).*

SUPPLEMENTARY INFORMATION: *Title:* Compensation Deferred Under Eligible Deferred Compensation Plans.

OMB Number: 1545–1580.

Regulation Project Number: TD 9075.

Abstract: The Small Business Job Protection Act of 1996 and the Taxpayer Relief Act of 1997 made changes to rules under Internal Revenue Code section 457 regarding eligible deferred compensation plans offered by state and local governments. TD 9075 requires state and local governments to establish a written trust, custodial account, or annuity contract to hold the assets and income in trust for the exclusive benefit of its participants and beneficiaries. Also, new non-bank custodians must submit applications to the IRS to be approved to serve as custodians of section 457 plan assets.

Current Actions: There are no changes being made to the regulation at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: State, local or tribal governments.

Estimated Number of Respondents: 10,260.

Estimated Time Per Respondent: 1 hour 2 minutes.

Estimate Total Annual Burden Hours: 10,600.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 13, 2013.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2013–04973 Filed 3–4–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Amortization of Reforestation Expenditures.

DATES: Written comments should be received on or before May 6, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Martha R. Brinson, at (202) 622–3869, or at Internal Revenue Service, Room 6129, 1111 Constitution

Avenue NW., Washington, DC 20224, or through the Internet at *Martha.R.Brinson@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Amortization of Reforestation Expenditures.

OMB Number: 1545–0735.

Regulation Project Number: TD 7927.

Abstract: Internal Revenue Code section 194 allows taxpayers to elect to amortize certain reforestation expenditures over a 7-year period if the expenditures meet certain requirements. The regulations implement this election provision and allow the IRS to determine if the election is proper and allowable.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, and farms.

Estimated Number of Respondents: 12,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 6,001.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 13, 2013.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2013–04971 Filed 3–4–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8879–S

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8879–S, IRS *e-file* Signature Authorization for Form 1120S.

DATES: Written comments should be received on or before May 6, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Martha.R.Brinson@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: IRS *e-file* Signature Authorization for Form 1120S.

OMB Number: 1545–1863.

Form Number: 8879–S.

Abstract: Form 8879–S authorizes an officer of a corporation and an electronic return originator (ERO) to use a personal identification number (PIN) to electronically sign a corporation's electronic income tax return and, if applicable, Electronic Funds Withdrawal Consent.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 11,360.

Estimated Time Per Respondent: 6 hours, 32 minutes.

Estimated Total Annual Burden Hours: 74,181.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 13, 2013.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2013–04970 Filed 3–4–13; 8:45 am]

BILLING CODE 4830–01–P

U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

Notice of Open Public Hearing

AGENCY: U.S.-China Economic and Security Review Commission.

ACTION: Notice of open public hearing—March 7, 2013, Washington, DC.

SUMMARY: Notice is hereby given of the following hearing of the U.S.-China Economic and Security Review Commission.

Name: William A. Reinsch, Chairman of the U.S.-China Economic and

Security Review Commission. The Commission is mandated by Congress to investigate, assess, and report to Congress annually on ''the national security implications of the economic relationship between the United States and the People's Republic of China.'' Pursuant to this mandate, the Commission will hold a public hearing in Washington, DC on March 7, 2013, ''Corporate Accountability, Access to Credit, and Access to Markets in China's Financial System—the Rules and Their Ramifications for U.S. Investors.''

Background: This is the second public hearing the Commission will hold during its 2013 report cycle to collect input from academic, industry, and government experts on national security implications of the U.S. bilateral trade and economic relationship with China. The economic and political drivers, rules and norms that govern China's financial markets diverge—sometimes sharply—from those that define the system in the United States, presenting unique challenges for U.S. investors and the enforcement agencies charged with protecting their interests. While investors have been eager to buy stock in high yield U.S.-listed Chinese companies accounting and financial management problems have created concern about the adequacy of protection of U.S. investors interests. Companies traded in U.S. Capital markets are required to disclose details of business strategies, financial records and operations. With SEC and U.S. exchanges halting trading of dozens of Chinese companies due to accounting practices and concerns about fraud, the Commission will examine U.S. and Chinese corporate governance and accountability rules, regulations and enforcement mechanisms. The Commission will also consider the availability of financial services, access to credit, and market opportunities for both Chinese and American private sector enterprises. With U.S. firms eager to meet growing demand for their financial services, witnesses will testify regarding access, opportunities and challenges in the Chinese marketplace.

The hearing will be co-chaired by Commissioners Robin Cleveland and Carte Goodwin. Any interested party may file a written statement by March 7, 2013, by mailing to the contact below. A portion of each panel will include a question and answer period between the Commissioners and the witnesses.

Location, Date and Time: 562 Dirksen Senate Office Building. Thursday, March 7, 2013, 9:00 a.m.–3:30 p.m. Eastern Time. A detailed agenda for the hearing is posted to the Commission's Web site at *www.uscc.gov.* Also, please check our Web site for possible changes to the hearing schedule. Reservations are not required to attend the hearing.

FOR FURTHER INFORMATION CONTACT: Any member of the public seeking further information concerning the hearing should contact Reed Eckhold, 444 North Capitol Street NW., Suite 602, Washington, DC 20001; phone: 202–624–1496, or via email at *reckhold@uscc.gov.* Reservations are not required to attend the hearing.

Authority: Congress created the U.S.-China Economic and Security Review Commission in 2000 in the National Defense Authorization Act (Pub. L. 106–398), as amended by Division P of the Consolidated Appropriations Resolution, 2003 (Pub. L. 108–7), as amended by Public Law 109–108 (November 22, 2005).

Dated: February 28, 2013.

Michael Danis,

Executive Director, U.S.-China Economic and Security Review Commission.

[FR Doc. 2013–05013 Filed 3–4–13; 8:45 am]

BILLING CODE 1137–00–P

FEDERAL REGISTER

Vol. 78 Tuesday,

No. 43 March 5, 2013

Part II

The President

Notice of March 1, 2013—Continuation of the National Emergency With Respect to the Situation in Zimbabwe

Federal Register
Vol. 78, No. 43
Tuesday, March 5, 2013

Presidential Documents

Title 3—

The President

Notice of March 1, 2013

Continuation of the National Emergency With Respect to the Situation in Zimbabwe

On March 6, 2003, by Executive Order 13288, the President declared a national emergency and blocked the property of persons undermining democratic processes or institutions in Zimbabwe, pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706). He took this action to deal with the unusual and extraordinary threat to the foreign policy of the United States constituted by the actions and policies of certain members of the Government of Zimbabwe and other persons to undermine Zimbabwe's democratic processes or institutions. These actions and policies had contributed to the deliberate breakdown in the rule of law in Zimbabwe, to politically motivated violence and intimidation in that country, and to political and economic instability in the southern African region.

On November 22, 2005, the President issued Executive Order 13391 to take additional steps with respect to the national emergency declared in Executive Order 13288 by ordering the blocking of the property of additional persons undermining democratic processes or institutions in Zimbabwe.

On July 25, 2008, the President issued Executive Order 13469, which expanded the scope of the national emergency declared in Executive Order 13288 and ordered the blocking of the property of additional persons undermining democratic processes or institutions in Zimbabwe.

The actions and policies of these persons continue to pose an unusual and extraordinary threat to the foreign policy of the United States. For this reason, the national emergency declared on March 6, 2003, and the measures adopted on that date, on November 22, 2005, and on July 25, 2008, to deal with that emergency, must continue in effect beyond March 6, 2013. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13288.

This notice shall be published in the *Federal Register* and transmitted to the Congress.

THE WHITE HOUSE,
Washington, March 1, 2013.

[FR Doc. 2013–05272
Filed 3–4–13; 11:15 am]
Billing code 3295–F3

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