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## BUREAU OF CONSUMER FINANCIAL PROTECTION

## 12 CFR Part 1076

## Claims Under the Federal Tort Claims Act for Loss of or Damage to Property or for Personal Injury or Death

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Final rule.

**SUMMARY:** The Bureau of Consumer Financial Protection is adopting a procedural rule that sets forth the procedures for filing, processing, and paying awards based on administrative claims under the Federal Tort Claims Act for money damages for loss of or injury to property, or for personal injury or death, caused by the negligent or wrongful act or omission of any employee of the Bureau while acting within the scope of the employee's office or employment.

**DATES:** The rule is effective on August 5, 2013.

**FOR FURTHER INFORMATION CONTACT:** Margaret H. Plank, Senior Counsel, General Law and Ethics, Legal Division, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552, 202–435–7623.

**SUPPLEMENTARY INFORMATION:**

### I. Background and Summary of the Rule

The Federal Tort Claims Act (FTCA), as amended, 28 U.S.C. 2671–2680, and the regulations issued by the Department of Justice (DOJ) contained in 28 CFR part 14, authorize the head of the Bureau or designee to consider, ascertain, adjust, determine, compromise, and settle claims for money damages against the United States for personal injury, death, or property loss or damage caused by the negligent or wrongful act or omission of any employee of the Bureau while acting within the scope of the employee's office or employment, under circumstances where the United States, if it were a private person, would be liable, in accordance with the law of the place where the act or omission occurred. This rule (Final Rule) establishes the Bureau's procedures for filing and processing any such claims.

Under the Final Rule, a claimant may present a covered claim to the Bureau by submitting a completed claim form and appropriate supporting information and evidence to the Bureau's General Counsel. The Final Rule authorizes the Bureau's General Counsel and members of the Legal Division designated by the General Counsel to consider and attempt to resolve claims. If the General Counsel or the General Counsel's designee disallows a claim, the General Counsel or designee will notify the claimant in writing.

### II. Legal Authority and Effective Date

This Final Rule is issued under the FTCA, as amended, which authorizes the Attorney General to prescribe regulations for the administrative adjustment of claims by Federal agencies. 28 U.S.C. 2672. The Attorney General, in turn, has authorized each Federal agency to issue regulations and establish procedures consistent with 28 CFR part 14. 28 CFR 14.11.

The Final Rule is procedural and not substantive and, thus, is not subject to the 30-day delay in effective date required by 5 U.S.C. 553(d). The Bureau is making the Final Rule effective immediately upon publication in the **Federal Register**.

### III. Regulatory Requirements

The Final Rule constitutes a Bureau rule of organization, procedure, or practice that is exempt from notice and public comment pursuant to 5 U.S.C. 553(b). Because notice of proposed rulemaking is not required, the Final Rule is not a ''rule'' as defined by the Regulatory Flexibility Act and the provisions of that statute do not apply. 5 U.S.C. 601(2). The Final Rule does not contain any new or revised information collection requirements that require the approval of the Office of Management and Budget (OMB) under the Paperwork Reduction Act. 44 U.S.C. 3501 *et seq.* The U.S. Department of Justice has previously obtained OMB approval for the Standard Form 95 and it is assigned the OMB control number 1105–0008. Please note that, notwithstanding any other provision of law, the Bureau may not conduct and persons are not required to respond to a collection of information unless it displays a currently valid OMB control number.

### List of Subjects in 12 CFR Part 1076

Claims against the government, Government employees, Money damages.

### Authority and Issuance

For the reasons set forth above, the CFPB amends Chapter X in Title 12 of the Code of Federal Regulations by adding a new part 1076 to read as follows:

## CHAPTER X—BUREAU OF CONSUMER FINANCIAL PROTECTION

## PART 1076—CLAIMS AGAINST THE UNITED STATES

Sec.

1076.101 Claims against a Bureau employee based on negligence, wrongful act or omission.

**Authority:** 12 U.S.C. 5492(a)(1), (11); 28 U.S.C. 2672; 28 CFR 14.11.

### § 1076.101 Claims against a Bureau employee based on negligence, wrongful act or omission.

(a) *Procedure for filing claims.* A claimant, or the claimant's duly authorized agent or legal representative may present a claim against a Bureau employee based on negligence, or wrongful act or omission, as specified in 28 CFR 14.3. Claimant or claimant's duly authorized agent or legal representative must file with the General Counsel of the Bureau a completed Claim for Damage or Injury (*Standard Form 95*), together with appropriate evidence and information, as specified in 28 CFR 14.4. Standard Form 95 may be obtained at *http://www.justice.gov/civil/docs_forms./SF-95.pdf,* or from the CFPB. Claimants also may submit a claim in the form of a letter or any other writing, a written statement, an audio file, a Braille or electronic document, and/or a video, as long as the submission contains all of the requirements of an administrative claim specified in 28 CFR part 14. Claims should be mailed or delivered to the General Counsel, Legal Division, CFPB, 1700 G Street NW., Washington, DC 20552, or emailed to *CFPB_tortclaims@cfpb.gov.*

(b) *Determination of claims*—(1) *Delegation of authority to determine claims.* The General Counsel, and such employees of the Legal Division as the General Counsel may designate are authorized to consider, ascertain, adjust, determine, compromise, and settle claims pursuant to the FTCA, as amended, and the regulations contained in 28 CFR part 14 and in this section.

(2) *Disallowance of claims.* If the General Counsel, or the General Counsel's designee, denies a claim, the General Counsel or designee shall notify the claimant, or the claimant's duly authorized agent or legal representative.

Dated: July 11, 2013.

**Richard Cordray,**

*Director, Bureau of Consumer Financial Protection.*

[FR Doc. 2013–18844 Filed 8–2–13; 8:45 am]

**BILLING CODE 4810–AM–P**

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 37

**RIN 3038–AD18**

### Core Principles and Other Requirements for Swap Execution Facilities; Correction

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Final rule; correction.

**SUMMARY:** The Commodity Futures Trading Commission is correcting a final rule that appeared in the **Federal Register** of June 4, 2013 (78 FR 33476). The final rule applies to the registration and operation of a new type of regulated entity named a swap execution facility, and implements provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

**DATES:** The effective date of this correction is August 5, 2013.

**FOR FURTHER INFORMATION CONTACT:** Amir Zaidi, Special Counsel, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street NW., Washington, DC 20581; 202–418–6770; *azaidi@cftc.gov.*

**SUPPLEMENTARY INFORMATION:** In FR Doc. 2013–12242 appearing on page 33476 in the **Federal Register** of Tuesday, June 4, 2013, the following corrections are made:

**§ 37.702 [Corrected]**

1. On page 33591, in the second column, in § 37.702 General financial integrity, paragraph (b) is corrected to read as follows:

(b) For transactions cleared by a derivatives clearing organization:

(1) By ensuring that the swap execution facility has the capacity to route transactions to the derivatives clearing organization in a manner acceptable to the derivatives clearing organization for purposes of clearing; and

(2) By coordinating with each derivatives clearing organization to which it submits transactions for clearing, in the development of rules and procedures to facilitate prompt and efficient transaction processing in accordance with the requirements of § 39.12(b)(7) of this chapter.

**Appendix B to Part 37—Guidance on, and Acceptable Practices in, Compliance With Core Principles [Corrected]**

2. On page 33600, in the second column, under the heading Core Principle 3 of Section 5h of the Act—Swaps Not Readily Susceptible to Manipulation, in paragraph (a)(3), correct the reference to ''section c(5)'' to read ''section c(4).''

Dated: July 31, 2013.

**Christopher J. Kirkpatrick,**

*Deputy Secretary of the Commission.*

[FR Doc. 2013–18773 Filed 8–2–13; 8:45 am]

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 101

**[Docket No. FDA–2005–N–0404]**

**RIN 0910–AG84**

### Food Labeling; Gluten-Free Labeling of Foods

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA or we) is issuing a final rule to define the term ''gluten-free'' for voluntary use in the labeling of foods. The final rule defines the term ''gluten-free'' to mean that the food bearing the claim does not contain an ingredient that is a gluten-containing grain (e.g., spelt wheat); an ingredient that is derived from a gluten-containing grain and that has not been processed to remove gluten (e.g., wheat flour); or an ingredient that is derived from a gluten-containing grain and that has been processed to remove gluten (e.g., wheat starch), if the use of that ingredient results in the presence of 20 parts per million (ppm) or more gluten in the food (i.e., 20 milligrams (mg) or more gluten per kilogram (kg) of food); or inherently does not contain gluten; and that any unavoidable presence of gluten in the food is below 20 ppm gluten (i.e., below 20 mg gluten per kg of food). A food that bears the claim ''no gluten,'' ''free of gluten,'' or ''without gluten'' in its labeling and fails to meet the requirements for a ''gluten-free'' claim will be deemed to be misbranded. In addition, a food whose labeling includes the term ''wheat'' in the ingredient list or in a separate ''Contains wheat'' statement as required by a section of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) and also bears the claim ''gluten-free'' will be deemed to be misbranded unless its labeling also bears additional language clarifying that the wheat has been processed to allow the food to meet FDA requirements for a ''gluten-free'' claim. Establishing a definition of the term ''gluten-free'' and uniform conditions for its use in food labeling will help ensure that individuals with celiac disease are not misled and are provided with truthful and accurate information with respect to foods so labeled. We are issuing the final rule under the Food Allergen Labeling and Consumer Protection Act of 2004 (FALCPA).

**DATES:** *Effective date:* The final rule becomes effective on September 4, 2013. *Compliance date:* The compliance date of this final rule is August 5, 2014. See section II.B.4 (comment 35 and response 35) for an additional explanation of the compliance date and implementation of this final rule.

**FOR FURTHER INFORMATION CONTACT:** Felicia B. Billingslea, Center for Food Safety and Applied Nutrition (HFS–820), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–2371, FAX: 301–436–2636, email: *GlutenFreeFinalRule Questions@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:**

**Executive Summary**

*Purpose of the Rule*

*Need for the rule:* Celiac disease is a hereditary, chronic inflammatory disorder of the small intestine triggered by the ingestion of certain storage proteins referred to as gluten occurring in wheat, rye, barley, and crossbreeds of these grains. Celiac disease has no cure, but individuals who have this disease are advised to avoid all sources of gluten in their diet to protect against adverse health effects associated with the disease. Many manufacturers currently label their food with a

''gluten-free'' labeling claim. However, there is no current regulatory definition for the ''gluten-free'' claim in the United States. Establishing in this final rule a regulatory definition of the food labeling term ''gluten-free'' and uniform conditions for its use in the labeling of foods is necessary to ensure that individuals with celiac disease are not misled and are provided with truthful and accurate information with respect to foods so labeled; this final rule is also necessary to respond to a directive of FALCPA (title II of Pub. L. 108–282).

*Legal authority:* Consistent with section 206 of FALCPA and sections 403(a)(1), 201(n), and 701(a) of the FD&C Act (21 U.S.C. 343(a)(1), 321(n), and 371(a), respectively), we are issuing requirements for the use of the term ''gluten free'' for voluntary use in the labeling of foods.

**Major Provisions of the Rule**

The final rule defines and sets conditions on the use of the term ''gluten-free'' in foods, including:

- Foods that inherently do not contain gluten (e.g., raw carrots or grapefruit juice) may use the ''gluten-free'' claim.
- Foods with any whole, gluten-containing grains (e.g., spelt wheat) as ingredients may not use the claim;
- Foods with ingredients that are gluten-containing grains that are refined but still contain gluten (e.g., wheat flour) may not use the claim;
- Foods with ingredients that are gluten-containing grains that have been refined in such a way to remove the gluten may use the claim, so long as the food contains less than 20 ppm gluten/has less than 20 mg gluten per kg (e.g. wheat starch);
- Foods may not use the claim if they contain 20 ppm or more gluten as a result of cross-contact with gluten containing grains.

For reasons discussed in more detail in this document, under limited circumstances we intend to exercise enforcement discretion with respect to the requirements for ''gluten-free'' labeling for FDA-regulated beers that currently make a ''gluten-free'' claim and that are: (1) Made from a non-gluten-containing grain or (2) made from a gluten-containing grain, where the beer has been subject to processing that the manufacturer has determined will remove gluten below a 20 ppm threshold. We plan to issue a proposed rule to address our compliance approach to fermented or hydrolyzed products.

In addition, the final rule provides that:

- A food that bears the claim ''no gluten,'' ''free of gluten,'' or ''without gluten'' in its labeling and fails to meet the requirements for a ''gluten-free'' claim will be deemed to be misbranded.
- A food whose labeling includes the term ''wheat'' in the ingredient list or in a separate ''Contains wheat'' statement as required by FALCPA and also bears the claim ''gluten-free'' will be deemed to be misbranded unless its labeling also bears additional language clarifying that the wheat has been processed to allow the food to meet FDA requirements for a ''gluten-free'' claim.

By defining ''gluten-free'' and the conditions under which a ''gluten-free'' claim can be used, the final rule makes it easier for individuals with celiac disease to make informed purchasing decisions. This will enable them to adhere to a diet they can tolerate without causing adverse health effects and to select from a variety of available gluten-free foods.

**Costs and Benefits**

Full compliance with the final rule would have annualized costs of about $7 million per year and annual health benefits of about $110 million per year:

ANNUAL BENEFIT AND COST OVERVIEW

| | | |
|---|---|---|
| Benefits | Health Gains for Individuals With Celiac Disease | $110,000,000. |
| | Search Cost Reduction | Unknown. |
| Costs | Relabeling of Foods | $1,000,000. |
| | Testing of Foods | $5,800,000. |
| Net Benefits | | >$103,000,000. |

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## I. Background

### *A. What is celiac disease?*

Celiac disease (also known as celiac sprue and gluten-sensitive enteropathy) is a chronic inflammatory disorder of the small intestine in genetically susceptible individuals. It is triggered by ingesting certain storage proteins, commonly referred to as ''gluten,'' that naturally occur in some cereal grains (Refs. 1 through 3). In such individuals, the consumption of gluten stimulates the production of antibodies and inflammatory cells, resulting in an abnormal immune response, which damages the tiny, fingerlike protrusions called ''villi,'' that line the small intestine and function to absorb nutrients from food (Ref. 4). Over time, continued dietary exposure to gluten can destroy the intestinal villi of individuals with celiac disease, leading to a lack of absorption of nutrients and a wide variety of other serious health problems (Ref. 4).

The symptoms and clinical manifestations of celiac disease are highly variable among affected individuals and differ in severity. The reasons for this variability are unknown, but may depend upon the individual's age and immunological status, the amount, duration or timing of the exposure to gluten, and the specific area and extent of the gastrointestinal tract involved in the disease (Ref. 5). Symptoms of celiac disease may be: (1) ''Classical,'' affecting the digestive tract (e.g., abdominal bloating; cramping and pain; chronic diarrhea; vomiting; constipation) and resulting in gastrointestinal malabsorption; or (2) ''atypical,'' affecting mainly other parts of the body (e.g., fatigue; irritability; behavior changes; bone or joint pain; tingling numbness in the legs; ulcers in

the mouth; tooth discoloration or loss of enamel; itchy skin rash with blisters called dermatitis herpetiformis) (Refs. 1, 4, 6, and 7).

A large portion of the subpopulation that has celiac disease may not experience any symptoms at all, and these individuals are classified as having either the ''silent'' or ''latent'' form of celiac disease (Refs. 1 and 8). Persons who have the silent form of celiac disease have most of the diagnostic features commonly seen in individuals with classical or atypical celiac disease, such as specific serum antibodies and evidence of damaged intestinal villi. Those who have the latent form of celiac disease have specific serum antibodies, but no evidence of damaged intestinal villi (Ref. 1).

In addition to the aforementioned clinical symptoms and ailments, celiac disease is associated with a number of significant health problems and disorders, including iron-deficiency anemia, vitamin deficiencies, protein-calorie malnutrition, weight loss, short stature, growth retardation in children, delayed puberty, infertility, miscarriage, and osteoporosis (Refs. 1, 6, 9, and 10). Individuals with unmanaged celiac disease are at an increased risk of developing other serious medical conditions, such as Type I diabetes mellitus, intestinal cancers, and both intestinal and extraintestinal non-Hodgkin's lymphomas (Refs. 7, 11, 12, and 13).

Celiac disease has no cure, but individuals who have this disease are advised to avoid all sources of gluten in their diet (Refs. 1 and 6). Over time, strictly avoiding consumption of gluten can resolve the symptoms, mitigate and possibly reverse the damage, and reduce the associated health risks of celiac disease (Ref. 14). For some individuals with celiac disease, failure to avoid consumption of gluten can lead to severe and sometimes life-threatening complications that can affect multiple organs of the body (Refs. 5, 6, and 15).

*B. How prevalent is celiac disease in the United States?*

Precise prevalence data for celiac disease are not available. In the January 23, 2007, proposed rule (72 FR 2795 at 2797), we cited estimates regarding the overall prevalence of celiac disease in the United States ranging from about 0.4 percent to about 1 percent of the general population, or approximately 1.5 to 3 million Americans (Refs. 1 and 16). According to the National Health and Nutrition Examination Survey (NHANES) 2009–2010 survey data on medical conditions, 0.14 percent of the civilian, non-institutionalized population of the United States reported having been told by a medical professional that they have celiac disease (Ref. 17). Researchers examining serological data from a subset of the NHANES 2009–2010 study population for evidence of celiac disease estimated the prevalence of celiac disease at 0.71 percent (Ref. 18).

The discrepancy between estimated prevalence and diagnosed cases has been linked primarily to the fact that celiac disease can be silent or latent, as described in section I.A. Silent and latent forms of celiac disease may go undetected in an individual for years before the person develops symptoms causing him or her to seek medical attention. In addition, celiac disease is often mistaken for other gastrointestinal malabsorption disorders that have similar diarrheal symptoms (e.g., irritable bowel syndrome), which further delays its diagnosis (Ref. 19). Only recently has the medical community become more aware of the need to screen for celiac disease when patients experience health problems that may be associated with the disease or when patients have family members, especially first- and second-degree relatives, who have celiac disease (Ref. 1).

*C. What did the Food Allergen Labeling and Consumer Protection Act of 2004 do with respect to celiac disease? What other activities did we conduct for this rulemaking?*

FALCPA, Title II of Public Law 108–282, was enacted on August 2, 2004. Section 206 of FALCPA directs the Secretary of Health and Human Services (HHS) (the Secretary), in consultation with appropriate experts and stakeholders, to issue a rule to define, and permit use of, the term ''gluten-free'' on the labeling of foods. This rulemaking implements section 206 of FALCPA.

FALCPA does not require that we establish a threshold level for gluten. Nonetheless, an important scientific issue associated with the issuance of this rule is the potential existence of a threshold level below which it is unlikely that an individual with celiac disease will have an adverse health effect.

To address this issue, among others, we established an internal, interdisciplinary group (the Threshold Working Group) to review the scientific literature on the issue of a threshold level for gluten. The Threshold Working Group's report, ''Approaches to Establish Thresholds for Major Food Allergens and for Gluten in Food'' (issued in draft and later revised, referred to herein as the ''Thresholds Report'' except where noted) (Ref. 20), summarized the current state of scientific knowledge with respect to a dose-response relationship for gluten, and presented the following four potential approaches that we might consider in establishing such a threshold level, if we chose to do so (Ref. 20, pp. 2 and 38–41; Ref. 21 at pp. 2 and 42–45):

- Analytical methods-based—thresholds are determined by the sensitivity of the analytical method(s) used to verify compliance.
- Safety assessment-based—''safe'' level is calculated using the No Observed Adverse Effect Level (NOAEL) from available human challenge studies, applying an appropriate ''uncertainty factor'' multiplier to account for knowledge gaps.
- Risk assessment-based—examines known or potential adverse health effects resulting from human exposure to a hazard; quantifies the levels of risk associated with specific exposures and the degree of uncertainty inherent in the risk estimate.
- Statutorily derived—uses an exemption articulated in an applicable law and extrapolates from that to other potentially similar situations.

As the Thresholds Report explained, the term ''threshold'' has multiple meanings, including toxicological and statutory (or regulatory) (see Ref. 20 at p. 10). The Threshold Working Group noted that ''[u]nderstanding thresholds for gluten will help FDA develop a definition of 'gluten-free' and identify appropriate uses of the term.'' The Threshold Working Group recognized that setting such a regulatory threshold likely would require consideration of additional factors not addressed in the Thresholds Report, such as ease of compliance and enforcement, concerns of stakeholders (i.e., industry, consumers, and other interested parties), economics (e.g., cost/benefit analysis), trade issues, and legal authorities (Ref. 20 at p. 41).

The Thresholds Report concluded that it was not possible for us to use the quantitative risk assessment-based approach due to the lack of sufficient data from human clinical trials and the lack of sufficient data on exposure, and that the statutorily derived approach is not viable in the absence of applicable statutory provisions (Ref. 20 at pp. 4, 60, and 61). Thus, the two approaches identified in that report as viable for establishing a threshold for gluten were the analytical methods-based approach and the safety assessment-based approach.

In the **Federal Register** of June 17, 2005 (70 FR 35258), we published a notice announcing the availability of the draft version of the Thresholds Report. We invited interested persons to submit comments and any scientific data or other information to the docket during a 60-day comment period that ended on August 16, 2005. The Threshold Working Group considered the comments, data, and information submitted, and made appropriate revisions to the draft Thresholds Report. On May 25, 2006, we posted our response (Ref. 22) to the comments, data, and other information that we received. We also posted the revised Thresholds Report (Ref. 21). Both documents are dated March 2006.

Additionally, in the **Federal Register** of May 23, 2005 (70 FR 29528), we announced that our Food Advisory Committee (FAC) would hold a public meeting on July 13 through 15, 2005, to evaluate the draft version of the Thresholds Report. One purpose of the meeting was for the FAC to determine whether the four approaches considered in the Thresholds Report for establishing a threshold level for gluten were scientifically sound. We invited experts to address a number of specific issues related to sensitivities to gluten. In addition, we invited interested persons to submit comments and any scientific data or other information relevant to the issues pending before the FAC.

During the public meeting, the FAC heard presentations from invited experts on the diagnosis and treatment of celiac disease, the quality of life issues faced by those who have celiac disease and their families, the relationship between gluten proteins in various grains and celiac disease, analytical methods for detecting and measuring the levels of gluten in food, the value and use of prospective and retrospective gluten tolerance studies, and a summary of existing national and international definitions of ''gluten-free'' for food labeling. Further, members of the general public, including those representing trade associations, industry, consumers, and other stakeholders, gave brief presentations before the FAC to share their perspectives on some of the same topics addressed by the invited experts. The speaker presentations, public comments, FAC discussions, and the FAC responses to a set of specific questions and the charge to the FAC posed by FDA's Center for Food Safety and Applied Nutrition (CFSAN) are recorded in the transcript of the meeting, which is available through the FDA Docket No. 2005N–0231 and is posted at CFSAN's Web site (*http://www.fda.gov/ohrms/dockets/ac/cfsan05.html*). Copies of the transcript materials that specifically address the topics of celiac disease and a gluten threshold level are also available through the docket for this rulemaking. A summary of the FAC responses to the questions is provided in the Summary Minutes (Ref. 23).

The FAC concluded that the Thresholds Report ''includes a comprehensive evaluation of the currently available data and descriptions of all relevant approaches that could be used to establish [a] threshold . . . for gluten in food'' (Ref. 23, p. 1). The FAC also identified the risk-assessment approach as the strongest of the four approaches proposed in the Thresholds Report, assuming the availability of sufficient data (Ref. 23, p. 1).

In the **Federal Register** of July 19, 2005 (70 FR 41356), we announced that we would hold a public meeting on August 19, 2005, to discuss the topic of gluten-free food labeling. We gave interested persons until September 19, 2005, to comment on a list of specific questions concerning food manufacturing, analytical methods, and consumer purchasing practices and views about gluten-free foods (70 FR 41356 at 41357). In addition, we invited experts to address these issues at the meeting, and invited members of the general public, including individuals with celiac disease and their caregivers, to share their views about foods produced and labeled as ''gluten-free.'' We received more than 2,400 comments about the public meeting or the list of questions cited in the notice announcing the meeting. The vast majority of these comments were from individuals with celiac disease, their caregivers, and celiac disease associations; we also received comments from the food industry. Most consumers said that they appreciate and use ''gluten-free'' labeling claims to identify packaged foods they can eat when trying to avoid gluten. Many consumers stated that a ''gluten-free'' labeling claim makes it easier to shop for groceries, saving the consumers both time and the frustration experienced when reading often lengthy and complicated ingredients lists that the consumers did not understand. Many consumers also stated that they primarily purchase packaged foods bearing a ''gluten-free'' labeling claim and that a standardized definition of the term ''gluten-free'' for foods marketed in the United States would give them more assurance that foods bearing this claim are appropriate for individuals trying to avoid gluten. The comments reflected a consensus of opinion among individuals with celiac disease, and the organizations which represent them, that wheat, rye, and barley should be excluded from any products labeled as ''gluten-free.'' However, comments from these individuals and organizations varied with respect to whether we should exclude oats from any products labeled as ''gluten-free.''

Industry comments submitted in response to the 2005 public meeting or to the list of questions cited in the notice announcing the meeting indicated that currently there is no universal understanding among manufacturers of what the term ''gluten-free'' means and there is no uniform industry standard for producing foods bearing this labeling claim. Several industry comments expressed the opinion that a standardized definition for ''gluten-free'' could help promote fair competition among packaged foods marketed as gluten-free in the United States, because all manufacturers would have to adhere to the same requirements if they label their products ''gluten-free.''

*D. What did we propose to do?*

In the **Federal Register** of January 23, 2007 (72 FR 2795), we published a proposed rule to define the term ''gluten-free'' and allow its voluntary use in the labeling of foods. In brief, the proposed rule would:

- Define the term ''gluten-free'' for voluntary use in the labeling of foods, to mean that the food does not contain any of the following: An ingredient that is any species of the grains wheat, rye, barley, or a crossbred hybrid of these grains (collectively referred to in the proposed rule as ''prohibited grains''); an ingredient that is derived from a prohibited grain and that has not been processed to remove gluten (e.g., wheat flour); an ingredient that is derived from a prohibited grain and that has been processed to remove gluten (e.g., wheat starch), if the use of that ingredient results in the presence of 20 ppm or more gluten in the food; or 20 ppm or more gluten.
- Deem a food to be misbranded that bears the claim ''gluten-free'' or similar claim in its labeling and fails to meet the conditions specified in the proposed definition of ''gluten-free.''
- Deem a food to be misbranded if it bears a ''gluten-free'' claim in its labeling if the food is inherently free of gluten and if the claim does not refer to all foods of that same type (e.g., ''milk, a gluten-free food'' or ''all milk is gluten-free'').

• Deem a food made from oats that bears a ''gluten-free'' claim in its labeling to be misbranded if the claim suggests that all such foods are ''gluten-free'' or if 20 ppm or more gluten is present in the food.

The proposed rule would create a new § 101.91 entitled ''Gluten-free labeling of food.'' In the preamble to the proposed rule (72 FR 2795 at 2803), we stated that, after publication of the proposed rule, we would conduct a safety assessment for gluten exposure consistent with the safety assessment-based approach described in the Thresholds Report. We requested comments providing data relevant to the safety assessment. We stated that we would publish a notice in the **Federal Register** seeking comment on the draft safety assessment and its potential use in the final rule and that we would consider public and peer-review comments in revising the safety assessment, as appropriate. Under the safety assessment-based approach, the labeling threshold would be determined at least in part on the basis of a ''safe'' level or ''tolerable daily intake'' (TDI) of a substance as calculated using the NOAELs and the Lowest Observed Adverse Effect Levels from available dose-response data in animals or humans and applying one or more appropriate ''uncertainty factors'' to account for gaps, limitations, and uncertainty in the data and for inter-individual difference (i.e., variability among individuals within the target population).

We subsequently completed a health hazard assessment of the adverse health effects of gluten exposure in individuals with celiac disease that included a safety assessment for gluten, and we submitted a report on this health hazard assessment, the ''Gluten Report,'' to scientific experts for peer review. In the preamble to this final rule, we generally use the term ''safety assessment'' to mean the entire analysis reported in the ''Gluten Report'', because this language is consistent with the Thresholds Report's use of the term ''safety assessment-based approach.'' We revised the ''Gluten Report'' after considering the experts' comments and made a report concerning the peer review available at our Web site at *http://www.fda.gov/downloads/Food/ScienceResearch/ResearchAreas/RiskAssessmentSafetyAssessment/UCM264152.pdf.*

In the **Federal Register** of August 3, 2011 (76 FR 46671), we published a notice (2011 notice) that reopened the comment period for the proposed rule, in part, to announce the availability of the ''Gluten Report'' and to invite comments on the report. We also asked whether and if so, how, the safety assessment should affect FDA's proposed definition of ''gluten-free'' in the final rule. Finally, we sought comment on our tentative conclusion that the safety assessment-based approach may lead to a conservative, highly uncertain estimation of risk to individuals with celiac disease associated with very low levels of gluten exposure, and that the final rule should adopt the proposed rule's approach to defining the term ''gluten-free.'' We also sought comment on a few other matters unrelated to the questions about the safety assessment and its potential use in the final rule.

We received a number of comments concerning our safety assessment. To the extent those comments address the potential use of the safety assessment in the final rule, we describe and respond to them in part II. We discuss and respond to comments that focused on the safety assessment's methodology in ''FDA's Responses to Comments on the Report Titled 'Health Hazard Assessment for Gluten Exposure in Individuals With Celiac Disease: Determination of Tolerable Daily Intake Levels and Levels of Concern for Gluten,' '' (Ref. 24) which is available at *http://www.fda.gov/downloads/Food/FoodScienceResearch/RiskSafetyAssessment/UCM362401.pdf.* We received nearly 2,000 submissions in response to both the proposed rule and to the 2011 notice announcing the reopening of the comment period. Most submissions came from individuals, and we also received comments from industry and trade associations, consumer and advocacy groups, academic organizations, and foreign government agencies. For example, many comments from consumers stated that they currently must search the list of ingredients on each product and that it is difficult to do so because the presence of gluten is not always evident to a layperson from the information on the label. Some comments noted that consumers often contact the manufacturer to confirm if the food contains gluten and that this task requires significant time and effort. The comments stated that foods labeled ''gluten-free'' according to a standard definition would provide an easier and faster way to identify such foods. Despite the apparent broad consensus among comments about the need for a standard definition of ''gluten-free,'' the comments raised many distinct issues about how such a definition should be developed and implemented.

We discuss the issues raised in the comments on the proposed rule as well as the 2011 notice, and also describe the final rule, in section II. For ease of reading, we preface each comment discussion with a numbered ''Comment,'' and each response by a corresponding numbered ''Response.'' We have numbered each comment to help distinguish among different topics. The number assigned is for organizational purposes only and does not signify the comment's value, importance, or the order in which it was received.

## II. What issues did the comments raise? What are FDA's responses to the comments? What does the final rule say?

### *A. What general comments did we receive? What regulatory approach should we take?*

As explained in sections I.C and I.D, the Thresholds Report summarized the current state of scientific knowledge with respect to a dose-response relationship for gluten, and presented four potential approaches that we might consider in establishing such a threshold level. We decided to issue a proposed rule that used one of those approaches, an analytical methods-based approach, under which the thresholds are determined by the sensitivity of the analytical method(s) used to verify compliance. However, we also conducted a safety assessment in which we reviewed available human challenge studies, exposure data, and other information, applying certain specified assumptions and appropriate ''uncertainty factor'' multipliers to account for knowledge gaps, to arrive at an estimation of risk to individuals with celiac disease associated with very low levels of gluten exposure. In the safety assessment we estimated level of concern (LOC) values for individuals with celiac disease, depending upon the corresponding age group and whether the adverse health effects are clinical or morphological and/or physiological in nature, at the 90th percentile level of intake of ''all celiac disease grain foods.'' As described in the ''Gluten Report,'' the estimated gluten LOC values for individuals with celiac disease range from 0.01 to 0.06 ppm. However, as we noted in the 2011 notice, this estimation of risk to individuals with celiac disease associated with very low levels of gluten exposure may be conservative and highly uncertain.

Many comments supported our tentative conclusion to use the analytical method-based approach, rather than the safety assessment-based approach, and supported our proposed

criteria for defining the term ''gluten-free,'' including the proposed requirement that food bearing a ''gluten-free'' claim not contain 20 ppm or more gluten. Some comments argued that the safety assessment-based approach should be followed. The comments on our approach raised four primary points concerning which approach to use in the final rule, addressed in more detail in the following bulleted list. These were:

- The potential impact of the choice of approach on the availability of foods that could be labeled ''gluten-free'';
- The potential impact on the health of individuals with celiac disease of the choice of approach for establishing a regulatory definition of ''gluten-free'';
- The availability of analytical methods to evaluate compliance and to enforce a regulatory definition of ''gluten-free'' at different levels; and
- The relationship between FDA's definition of ''gluten-free'' and that of international bodies.

1. How would the choice of approach affect the availability of gluten-free foods?

(Comment 1) Several comments stated that using an extremely low level of gluten, such as those estimated in the safety assessment, to define ''gluten-free'' could cause some manufacturers to stop identifying food as gluten-free. The comments explained that, under the safety assessment-based approach, a manufacturer might stop identifying a food as gluten-free because the food could not meet a very low gluten threshold (e.g., 0.01 ppm gluten) for reasons such as an ingredient's cross-contact with gluten-containing grain during agricultural production or supply stages or difficulty separating gluten-containing and gluten-free products in mixed-use processing facilities.

Many comments from individuals with celiac disease stated that they rely on products labeled ''gluten-free'' to reduce the time spent reading ingredient lists on products to determine if the foods are safe for them to eat. These comments expressed concern that if we establish a gluten content that is lower than < 20 ppm gluten for purposes of defining the term ''gluten-free,'' manufacturers might find it difficult to manufacture foods that consistently met the lower gluten content. The comments stated that this may result in fewer foods labeled ''gluten-free.'' The comments suggested that a decrease in the number and variety of foods labeled ''gluten-free'' would mean that individuals with celiac disease would have to invest more time and effort to identify appropriate foods, and could reduce compliance with a gluten-free diet, with potential adverse health consequences for them.

One comment stated that, even if an analytical method were available to test for the presence of gluten at levels below 1 ppm, ''it would become increasingly costly for food companies, despite thorough adherence to good manufacturing practices, either to clean equipment adequately or to invest in dedicated equipment in order to meet the increasingly lower gluten threshold. This in turn would lead to more expensive food products developed for celiac consumers, or to companies stopping the production of 'gluten free' food products, thus reducing the food choices available for gluten sensitive consumers.'' Other comments echoed that the result of adopting the safety assessment-based approach would be more costly food or fewer food options for individuals who have celiac disease.

(Response 1) We agree with the comments that the food industry may be unable to consistently meet a standard limiting the presence of gluten in foods labeled ''gluten-free'' to < 1 ppm, and that such a low level cannot, as of the date of this final rule, be verified through scientifically valid analytical methods. We also agree that such an approach would result in the removal from the market of many products that currently meet the criterion of < 20 ppm gluten in the definition of ''gluten-free'' and bear the claim, or discourage the introduction of new foods labeled as ''gluten-free,'' because manufacturers could not meet a gluten limit much lower than < 20 ppm. Limiting the availability of the number and variety of foods labeled ''gluten-free'' would be detrimental to individuals with celiac disease who are already challenged by the complexities of adhering long term to a gluten-free diet.

As for the comment's claim that an analytical method to detect very low gluten levels would be cost prohibitive, in the absence of such methods, we decline to speculate about their cost and whether manufacturers would be willing to incur such costs.

(Comment 2) Several comments indicated that consumers are uncertain about how much gluten 20 ppm represents and its relevance to the total amount of gluten that most individuals with celiac disease can tolerate.

(Response 2) Twenty ppm gluten is a concentration level rather than an absolute quantity of gluten in a food. Twenty ppm is the same as 0.002 percent. For example, at a concentration level of 20 ppm gluten, a 28.35 gram (g) or 1-ounce portion of food would contain 0.567 mg gluten (20 mg/kg × 28.35 g × 1 kg/1000 g = 0.567 mg). Because 20 ppm refers to a concentration and not an absolute quantity of gluten, if the ingredients of a food are all below 20 ppm, the end product cannot have a concentration that exceeds 20 ppm. The amount of gluten to which a person with celiac disease would be exposed in consuming food labeled ''gluten-free'' would depend upon the total quantity/weight of food consumed and the actual concentration of gluten in the product. On our own initiative, we have revised the final rule to describe the equivalent concentration of 20 mg gluten per kg of food to further harmonize our rule with international standards, such as those used in Codex Standard 118–1979 and European Commission Regulation No 41/2009.

2. How might the choice of approach affect the health of individuals with celiac disease?

(Comment 3) Several comments supported the proposed < 20 ppm gluten level as a criterion for labeling food as ''gluten-free.'' The comments asserted that individuals with celiac disease have for many years been consuming food products with levels of 20 ppm or more without adverse effect, and that products whose gluten levels are < 20 ppm should be safe for most individuals with celiac disease. The comments did not provide data to support these assertions.

Other comments expressed the belief that adopting a gluten level well below 20 ppm would reduce the risk of adverse health outcomes that individuals with celiac disease might experience at the proposed level of < 20 ppm gluten.

(Response 3) The final rule adopts a gluten content of < 20 ppm for parts of the definition of the ''gluten-free'' labeling claim, using the analytical methods-based approach. The scientific research conducted thus far and the information presented in our Gluten Report support a conclusion that most individuals with celiac disease can tolerate food that contains variable trace amounts and concentrations of gluten (see 76 FR 46671 at 46674 through 46675).

As we stated in the 2011 notice: ''To the extent it is possible to do so and protect public health, we believe that we should set a gluten threshold level for 'gluten free' labeling that best assists most individuals with celiac disease in adhering life-long to a 'gluten-free' diet without causing adverse health consequences. If the prevalence of persons with celiac disease not

following a 'gluten-free' diet increases because there are fewer foods labeled 'gluten-free' to choose from (because the criteria for making 'gluten-free' labeling claims are too stringent for most food manufacturers to meet) or such foods become more expensive (because any changes made by manufacturers to enable them to meet more stringent criteria to make foods labeled 'gluten-free' may increase their production costs), then these individuals could be at a higher risk of developing serious health complications and other diseases associated with celiac disease. In other words, moving to a definition of 'gluten-free' that adopts a criterion that is much lower than < 20 ppm gluten could have an adverse impact on the health of Americans with celiac disease.'' (See 76 FR 46671 at 46675).

Thus, while we disagree with the comments to the extent that they suggest that there is clear evidence that individuals with celiac disease have been consuming food with gluten content at or above 20 ppm without adverse effect, we believe that the available data and information support a determination that retaining the < 20 ppm part of the criteria for defining ''gluten-free'' is protective of public health.

For similar reasons, we also disagree with the comments suggesting that adopting a gluten level well below 20 ppm would reduce the risks of adverse health outcomes for individuals with celiac disease. Although the safety assessment estimated that highly sensitive individuals with celiac disease may not be fully protected if they consume foods containing a trace level of gluten above 0.01 ppm but below 20 ppm (see 76 FR 46671 at 46675), statements by some celiac disease researchers, based on their experience and epidemiological evidence, suggest that variable trace amounts and concentrations of gluten in foods can be tolerated by most individuals with celiac disease without causing adverse health effects (id. at 46674–46675). Thus, revising the proposed threshold gluten content for defining ''gluten-free'' to lower than 20 ppm (as per the safety assessment results) would not offer additional protection or clinical benefits to individuals with celiac disease. Moreover, other comments about the methodology used and studies chosen in the safety assessment suggest that the conclusions based on this information have led to highly conservative tolerance estimates for gluten. As such, although clearly defined gluten thresholds cannot be determined at this time of this final rule, there is no evidence that consumption of food products containing less than 20 ppm gluten would pose a risk of adverse health effects for the large majority of individuals with celiac disease. Future research and improved data on defining gluten thresholds may lead us to revisit our conclusion.

The varying needs of individuals with celiac disease may be best addressed by focused education and outreach. We acknowledge the offers of assistance we received in comments from several health care professionals, celiac disease organizations, and others to provide educational materials and conduct seminars that may help individuals to fully understand how the labeling can be used in their adherence to a gluten-free diet.

Although many comments focused on the < 20 ppm part of the criteria, under the final rule there are other criteria for when a food can and cannot be labeled ''gluten-free.'' These other criteria also are intended to reduce exposure to gluten in products labeled ''gluten-free.'' In essence, the definition of ''gluten-free'' is structured in such a way that manufacturers who wish to use a ''gluten-free'' claim cannot use as ingredients in their foods gluten-containing grains, or ingredients derived from those grains that have not been processed to remove gluten, regardless of the ultimate presence of gluten in the food.

Finally, we note that some comments indicated that some manufacturers of foods that may contain gluten—either because they contain ingredients that have been processed to remove gluten but retain some amount of gluten, or due to cross-contact—are able to produce foods that contain well below 20 ppm gluten, through the selection of ingredients, the use of facilities dedicated to only producing gluten-free foods, and the use of additional specific manufacturing controls that can prevent gluten cross-contact situations. We encourage the development and implementation of manufacturing practices that will ensure foods bearing the claim ''gluten-free'' meet the requirements in this final rule.

(Comment 4) One comment asserted that the results of the safety assessment demonstrate that there is no specific level of gluten that typically produces an adverse response in those sensitive to gluten and supported FDA's proposed approach as protective of most people with celiac disease based on currently available data and methodologies. The comment suggested that, if the proposed approach is used, manufacturers of products bearing a ''gluten-free'' claim also should be required to disclose the products' actual gluten content level (in mg per serving) on the label. The comment explained that disclosing the products' actual gluten content level will help individuals determine if a product is appropriate for their individual health needs and better control their gluten consumption. The comment also stated that, if the final rule adopts a < 20 ppm gluten limit, we should amend it quickly as new data become available concerning gluten tolerance or analytical methods.

(Response 4) We agree that the research described in the safety assessment and other data suggest that there is considerable human variability in response (in both kind and degree) to dietary gluten, and we took this inter-individual variability into account in the safety assessment by using a multiplier of 10 as one of the 2 uncertainty factors used to reduce the estimated TDI gluten levels. However, because of this variability and other uncertainties, as we noted in the 2011 notice, the safety assessment-based approach would lead to a conservative, highly uncertain estimate of risk to individuals with celiac disease associated with very low levels of gluten exposure. We also agree with the comment that we will need to continue to evaluate newer scientific knowledge and clinical findings, particularly on the long-term needs of those with celiac disease, and scientifically valid analytical methods for quantifying lower gluten content, as they become available. If those findings change our consideration of the various factors that we have applied in this rulemaking, we may, as suggested by the comment, consider reviewing the standard for ''gluten-free'' labeling. In the meantime, we encourage manufacturers of gluten-free foods to produce such foods with as little gluten as possible and to continue research in processing methods to reduce levels further.

We disagree with the comment's suggestion that we require manufacturers of gluten-free products to disclose their products' actual gluten content level on the labels. First, requiring a gluten-free product's label to disclose the product's actual gluten content level would be impractical because there might be variability in gluten content of a particular food due to natural variation in ingredients, minor modifications in the food's formulation, or changes in other manufacturing practices. Manufacturers also might change ingredient suppliers to reduce their manufacturing costs or buy ingredients from different suppliers if a particular ingredient were in short supply; in these situations, the gluten content of an ingredient also might

change. Thus, if we were to require manufacturers to disclose a product's actual gluten content, we would, in effect, be requiring manufacturers to test each batch of a food product that is already eligible to bear a ''gluten-free'' claim (e.g., did not contain 20 ppm or more gluten) and to reprint labels any time there was a slight variation in the gluten content of that food. This requirement would discourage manufacturers from marketing foods with a ''gluten-free'' label, and this, in turn, would limit the availability and variety of gluten-free foods for individuals with celiac disease.

Second, 20 ppm is currently the lowest level at which analytical methods have been scientifically validated to reliably and consistently detect gluten across a range of food matrices. Therefore, we are not in a position to identify a specific analytical method that a firm could use to identify the actual level of gluten in a food below 20 ppm.

We are aware that some independent third-party organizations currently certify products with respect to their gluten content, and that manufacturers of gluten-free products that obtain such certification may currently include information regarding the certified status of their products on their labels. We will evaluate such labeling to ensure such information is truthful and not misleading and meets other applicable FDA requirements.

3. What analytical methods are available to evaluate compliance and to enforce a regulatory definition of ''gluten-free'' at very low levels?

(Comment 5) Some comments stated that there is no analytical method to measure gluten at the levels identified in the safety assessment (0.01 to 0.6 ppm).

(Response 5) We agree with the comments that it is currently not possible to reliably and consistently test for gluten at the very low levels identified in the safety assessment. There are methods with limits of detection that are lower than the level at which they have been validated. Thus far, the reliability of those methods at these lower limits has not been demonstrated. Twenty ppm remains the level of gluten that can reliably and consistently be detected in a variety of food matrices.

(Comment 6) Numerous comments concurred with the proposed level of < 20 ppm as among the criteria for a ''gluten-free'' definition based on the analytical methods-based approach, but stated that we should reduce the gluten content used as part of the criteria to define the term ''gluten-free'' when validated analytical methods become available to reliably detect gluten in foods at lower levels. In contrast, other comments said that more sensitive analytical methods should not be the determining factor in lowering the gluten threshold level unless there is scientific evidence (e.g., evidence-based, peer-reviewed published studies) demonstrating that 20 ppm gluten in foods labeled ''gluten-free'' is ''toxic'' to those with celiac disease.

(Response 6) We agree, in part, with the comments. If future data indicate that the gluten content of < 20 ppm is not sufficiently protective of the health of individuals with celiac disease and analytical methods become available that can reliably detect gluten in a range of food matrices at levels below 20 ppm, we will reevaluate the < 20 ppm gluten level that we have included as part of the criteria for the definition of ''gluten-free.'' We agree that any changes to this gluten level should be supported by all available data, including data on analytical methods as well as epidemiological and clinical data on the impact of any change on the health of individuals with celiac disease.

In sum, defining the term ''gluten-free'' for use in the voluntary labeling of food involves the consideration of multiple factors, including currently available analytical methods and the needs of individuals with celiac disease, as well as factors such as ease of compliance and enforcement, stakeholder concerns, economics, trade issues, and legal authorities. An important consideration is that, as the comments suggest, lowering the gluten level below 20 ppm will make it far more difficult for manufacturers to make food products that could be labeled as ''gluten-free,'' thereby reducing food choices for individuals with celiac disease. While the safety assessment results suggest that there may be some individuals with celiac disease who are highly sensitive to gluten exposure even at very low levels, the safety assessment, by its nature, may lead to a conservative, highly uncertain estimation of risk for these individuals. Given the various factors we have to consider and the data available to us, we decline to revise the rule to adopt a safety assessment-based approach at this time. However, if new data and information become available in the future that affect the factors we considered in defining ''gluten-free,'' we may consider whether further refinement of the ''gluten-free'' definition would be appropriate.

4. Is the rule consistent with international standards?

(Comment 7) A few comments asked how our proposed definition of ''gluten-free'' differed from those used in other countries. Many comments focused on the < 20 ppm gluten content as the only element of our proposed rule that would apply to international products. Other comments questioned how differences would affect the United States in international trade negotiations, considering the World Trade Organization Agreements on Technical Barriers to Trade (TBT Agreement) and Application of Sanitary and Phytosanitary Measures (SPS Agreement).

Several comments supported the proposed definition of ''gluten-free'' as an opportunity to harmonize international standards for this term. Some comments cautioned against using a lower gluten content value, stating that a lower level would not allow harmonization with international trading partners such as Canada and the European Union, which use a standard of no greater than 20 ppm gluten.

Many comments commented on a definition of ''low gluten'' as allowed in Australia and New Zealand. Most comments stated that ''low-gluten'' labeling is meaningless for individuals who wish to avoid gluten, but other comments supported ''low-gluten'' claims to allow for differences in individual gluten tolerance or personal preference.

(Response 7) The 2011 notice indicated that the < 20 ppm part of the criteria consistent with approaches taken by the Codex Alimentarius Commission's revised ''Codex Standard for Foods for Special Dietary Use for Persons Intolerant to Gluten (Codex Standard 118–1979)'' and also with the European Commission's Commission Regulation (EC) No 41/2009, concerning ''the composition and labeling of foodstuffs suitable for people intolerant to gluten'' (76 FR 46671 at 46674). The Codex Standard established a threshold of 20 mg gluten per kg of product (which is equivalent to 20 ppm gluten) for foods labeled ''gluten-free,'' and the European Commission regulation requires that foods labeled as ''gluten free'' not contain more than 20 ppm gluten (Refs. 25 and 26).

The final rule's definition of ''gluten-free'' is similar, but not identical, to requirements or positions by the Codex Alimentarius Commission, the European Commission, and Canada. For example, although our final rule, Codex Standard 118–1979, and European Commission Regulation No 41/2009

(Ref. 26) identify wheat, rye, and barley as gluten-containing grains, and allow foods containing ingredients made from wheat, rye, barley, or their crossbred varieties to be labeled ''gluten-free'' if the ingredients have been processed so that the gluten content in the food is reduced, the requirements differ in the amount of reduction required. Codex Standard 118–1979 and European Commission Regulation No 41/2009) require gluten in these ingredients not exceed 20 mg/kg, whereas our final rule requires the use of ingredients processed to remove gluten does not result in the presence of 20 ppm or more gluten in the finished food (§ 101.91(a)(3)(i)(A)(*3*)). In addition, our final rule also requires that any unavoidable presence of gluten in the food be below 20 ppm (see § 101.91(a)(3)(i)(A)(*3*) and (a)(3)(ii)). Codex Standard 118–1979 and European Commission Regulation No 41/2009, in general, require that the gluten content ''not exceed'' 20 mg/kg in the food.''

We also note that, in June 2012, Health Canada described its position on gluten-free claims. Canadian regulations had previously defined ''gluten,'' in part, as any gluten protein from the grain of, or the grain of a hybridized strain created from, barley, oats, rye, triticale, or wheat, kamut, or spelt. In June 2012, however, Health Canada stated that: ''Based on the available scientific evidence, Health Canada considers that gluten-free foods, prepared under good manufacturing practices, which contain levels of gluten not exceeding 20 ppm as a result of cross-contamination, meet the health and safety intent of [Health Canada regulation] B.24.018 when a gluten-free claim is made.'' ''Based on the enhanced labeling regulations for allergens and gluten sources, any intentionally added gluten sources, even at low levels (e.g. wheat flour as a component in a seasoning mixture which makes up a small proportion of the final food), must be declared either in the list of ingredients or in a 'Contains' statement. In these cases, a gluten-free claim would be considered false and misleading. If, however, a manufacturer using a cereal-derived ingredient includes additional processing steps which are demonstrated to be effective in removing gluten, then the food may be represented as gluten-free'' (Ref. 27). The Health Canada position that food labeled ''gluten-free'' not contain more than 20 ppm gluten is comparable to the final rule's criterion that foods labeled ''gluten-free'' cannot contain 20 ppm gluten or more gluten.

However, we recognize that our final rule differs in certain respects from requirements or positions taken by Health Canada and other countries or entities. For example, Codex Standard 118–1979, European Commission Regulation No 41/2009, Australia New Zealand Food Standards Code standard 1.2.8 (Ref. 28), and Health Canada include oats as gluten-containing grains, whereas our final rule does not. (We discuss oats in our response to comment 9.) Codex Standard 118–1979 and European Commission Regulation No 41/2009 also state that a gluten-free food is one whose ''gluten level does not exceed'' 20 mg/kg, and Health Canada's position is that a gluten-free food has a gluten content ''not exceeding 20 ppm,'' whereas our final rule defines ''gluten-free'' with respect to a gluten content of < 20 ppm. We do not consider the difference between ''does not exceed 20 mg/kg or 20 ppm,'' compared to our ''< 20 ppm'' gluten content criterion, to be significant because, as indicated in our discussion of comment 19, many foods labeled as ''gluten-free'' have a gluten content well below 20 ppm.

As another difference, we recognize that European Commission Regulation No 41/2009 requires foods for those intolerant to gluten to not contain gluten exceeding 100 mg/kg and to bear the term ''very low gluten,'' and Australia New Zealand Food Standards Code standard 1.2.8 requires that a food have ''no detectable gluten'' if it claims to be ''gluten free.'' The Australia New Zealand Food Standards Code also states that a food can be ''low gluten'' if the detectable gluten content is no more than 20 mg per 100 g of food, which is equivalent to no more than 200 ppm. Our final rule does not define the use of ''low gluten'' or ''very low gluten'' claims. If such claims were used in labeling, we would evaluate such claims on a case-by-case basis as to whether the claim was truthful and not misleading. We discourage the use of statements in labeling about the gluten content in foods other than ''gluten-free.'' (We discuss ''low gluten'' claims in our response to comment 25.)

Based on our review of products currently on the market, we do not believe that the differences between our final rule and standards, requirements, or positions taken by other countries or entities will adversely affect the ability of manufacturers to voluntarily use the ''gluten-free'' claim, as appropriate, on many foods.

*B. What comments did we receive on the proposed rule?*

1. Definitions (§ 101.91(a))

a. *Prohibited grains (§ 101.91(a)(1)).* The proposed rule would define three terms. Proposed § 101.91(a)(1) would define ''prohibited grain'' as any one of three specific grains (wheat, rye, and barley) ''or their crossbred hybrids (e.g., triticale, which is a cross between wheat and rye).''

(Comment 8) Several comments disagreed with or would revise the term ''prohibited grain.'' Some comments stated that the term is misleading because it implies that all consumers, rather than consumers with celiac disease or consumers who are allergic to those grains, should avoid the grains. Some comments suggested alternative terminology; for example, one comment suggested replacing the term ''prohibited grain'' with ''specific grain.''

(Response 8) We agree in part and disagree in part with the comments. We agree that the word ''prohibited'' could create the misimpression that all consumers (rather than solely those individuals with celiac disease) should avoid these grains. We decline, however, to use the term ''specific grains'' because it does not provide any information as to what the term ''specific'' refers. Instead, we have revised § 101.91(a)(1) and corresponding language elsewhere in § 101.91(a) to refer to ''gluten-containing grain'' rather than ''prohibited grain.'' The term ''gluten-containing grain'' is simple, informative, and tied to the rule's definition of ''gluten.'' In addition, ''gluten-containing grain'' may avoid any misinterpretation of the rule's intent with respect to the consumption of gluten by individuals without celiac disease or other medical need to avoid gluten.

(Comment 9) Many comments addressed the use of oats as an ingredient that could be used in a food labeled ''gluten-free.'' Most comments supported the inclusion of oats as an ingredient in ''gluten-free''-labeled foods. The comments stated that the scientific evidence indicates that the majority of individuals who have celiac disease can tolerate eating oats. The comments added that oats are a whole grain and contribute essential nutrients and fiber to a gluten-free diet and that oats add more dietary variety and appeal to following a gluten-free diet. Many comments favored the use of ''gluten-free'' labeling for food containing oats only if the food contains less than 20 ppm gluten. These comments stated that limiting the use of

the ''gluten-free'' claim on these foods would make it easier for consumers to distinguish these oats from other commercially available oats that could contain higher levels of gluten due to cross-contact situations with gluten-containing grains. The comments stated that oats in food labeled ''gluten-free'' would provide individuals who have celiac disease and who are oat-tolerant more assurance that the product has been grown, processed, stored, and handled in a way to prevent incorporation of gluten.

Other comments opposed permitting oats in a food labeled ''gluten-free.'' These comments argued that not all individuals with celiac disease can tolerate oats and that FDA's definition of ''gluten-free'' should accommodate the needs of everyone who has celiac disease. Some comments stated that more research is needed to determine whether individuals with celiac disease should consume oats. Other comments stated that persons newly diagnosed with celiac disease and elderly persons with celiac disease are commonly advised not to introduce oats into their gluten-free diet until their small intestine has fully healed or that some individuals with celiac disease who are asymptomatic may be sensitive to oats and not know it. Finally, some comments said that if we do not prohibit oats in food labeled ''gluten-free,'' then the label should indicate if the food does or does not contain oats.

(Response 9) We agree with the comments that oats may be used as an ingredient in a food labeled as ''gluten-free'' provided that the food meets the definition of ''gluten-free.'' In other words, oats that contain 20 ppm or more gluten due to cross-contact may not bear a ''gluten-free'' claim. While oats are inherently gluten-free, we recognize that some oats may come in contact with gluten-containing grains during their production, processing, storage, or other handling practices. However, as we noted in the preamble to the proposed rule (72 FR 2795 at 2798), the commingling of oats with other grains appears to be preventable. At least two manufacturers who submitted written responses to our 2005 public meeting on gluten-free food labeling reported that the oats they market in the United States do not contain gluten from wheat, rye, and barley (Refs. 29 and 30). Other comments indicated that five brands of gluten-free oats are now commercially available in the United States.

We decline to prohibit the use of oats as an ingredient in foods labeled ''gluten-free.'' As we noted in the proposed rule, data suggest that the proportion of individuals with celiac disease who cannot tolerate oats in daily amounts of about 50 g or less dry weight is probably very low, possibly below 1 percent of the population of individuals with celiac disease, and there is no general agreement among experts about the extent to which oats present a hazard for individuals with celiac disease (72 FR 2795 at 2797 through 2798). Thus, for most individuals with celiac disease, oats can add whole grain options, nutrient enrichment, and dietary variety and appeal to a gluten-free diet. Individuals with celiac disease who cannot tolerate oats can use food label information to avoid eating foods labeled ''gluten-free'' that are made with oats or oat-derived ingredients. Examples of oat-derived ingredients include whole oats, rolled oats (also called oatmeal and oat flakes), steel-cut oats, oat flour, oat bran, and oat fiber. The term ''oat'' or ''oats'' is a part of the common or usual name for each of these ingredients and can be found in the food's ingredient list. For the reasons stated previously in this document, we also decline to revise the rule to require that foods labeled ''gluten-free'' bear additional language indicating that the food does or does not contain oats.

We recognize that there may be instances in which products could contain an oat-derived ingredient without ''oats'' in the name, but we did not receive any data or information on this possibility, and we are aware of only one such ingredient, a non-starch polysaccharide called ''beta glucan,'' which can be derived from multiple sources, including oats, and which is used in certain dietary supplements and to a much lesser extent in conventional foods (Ref. 31).

Because individuals with celiac disease who are sensitive to oats may wish to avoid all oat-derived ingredients, we encourage manufacturers of foods labeled ''gluten-free'' that use an oat-derived ingredient where the word ''oat'' does not appear in the ingredient list as part of any ingredient's name (e.g., beta glucans) to indicate in their labeling that an oat-derived ingredient is present.

(We understand that beta glucan may also be derived from barley, which, unlike oats, is a ''gluten-containing grain'' under § 101.91(a)(1). Similar to wheat starch, we consider beta glucan derived from barley to be an ingredient that has been processed to remove gluten because the process of deriving this ingredient is designed to selectively yield the desired polysaccharide and exclude other naturally occurring components, including protein.)

b. *Gluten (§ 101.91(a)(2)).* Proposed § 101.91(a)(2) would define ''gluten'' as ''the proteins that naturally occur in a prohibited grain and that may cause adverse health effects in persons with celiac disease (e.g., prolamins and glutelins).''

(Comment 10) Several comments suggested that FDA revise the definition of ''gluten'' to mean ''specific amino acid sequences'' that naturally occur in a prohibited grain and that cause harmful effects by eliciting an immune response.

(Response 10) We decline to revise the definition as suggested by the comments. The comments did not explain how the definition would be improved by replacing ''proteins'' with ''specific amino acid sequences'' or by replacing ''may cause adverse health effects'' with ''cause harmful effects by eliciting an immune response.'' We also note that our definition of ''gluten'' is comparable to those used by Codex Standard 118–1979 and European Commission Regulation No 41/2009; both define ''gluten'' as ''a protein fraction from wheat, rye, barley, oats, or their crossbred varieties and derivatives thereof, to which some [people] are intolerant and [that] is insoluble in water and 0.5M'' sodium chloride solution. Consequently, except for replacing ''prohibited grain'' with ''gluten-containing grain'' (as we explained in our response to comment 8), we have finalized the definition of ''gluten'' without change.

c. *''Gluten-free'' (§ 101.91(a)(3)).* Proposed § 101.91(a)(3) would define the labeling claim ''gluten-free'' or similar claims as meaning that the food bearing the claim in its labeling does not contain any of the following: (1) An ingredient that is a prohibited grain; (2) an ingredient that is derived from a prohibited grain and has not been processed to remove gluten (e.g., wheat flour); (3) an ingredient that is derived from a prohibited grain and has been processed to remove gluten if use of that ingredient results in a presence of 20 parts per million (ppm) or more gluten in the food; and (4) 20 ppm or more gluten. The proposal also cited examples of similar claims, such as ''free of gluten,'' ''without gluten,'' and ''no gluten'' that would have to meet the same definition as the term ''gluten-free.''

(Comment 11) Many comments asked us to develop a clear and consistent definition for the ''gluten-free'' labeling claim. However, one comment from a national organization committed to serving the celiac community noted that it had dietitians with expertise in the gluten-free diet develop a 15-question online consumer survey designed to obtain consumer input on the various

questions posed by FDA as they related to consumers and their decisions and choices related to gluten-free products. The organization executed the online survey, open to consumers for 45 days, and collected over 5,000 responses. The comment indicated that 95 percent of the respondents preferred the term ''gluten-free'' to indicate that a product meets FDA's definition for ''gluten-free,'' as set forth in the proposed rule. The comment also noted that voluntary label statements, such as ''may contain'' or ''processed in a plant with,'' currently restrict consumer use of some foods. The comment said that these types of voluntary label statements would be unnecessary if consumers could rely on a ''gluten-free'' label that indicated a product had been tested to below 20 ppm. The comment suggested that we strive for ''clarity'' in all aspects of the regulation. Another comment suggested that any definition of ''gluten-free'' should facilitate a reasonable level of consistency among various products labeled as ''gluten-free'' and should ensure that individuals who are sensitive to or cannot tolerate gluten can rely on gluten-free products meeting the same minimum definition.

Several comments recommended a single labeling definition for ''gluten-free'' foods and believed multiple labels would be too confusing to the public. As one comment stated, ''only one simple, clear standard claim like 'gluten free' may simplify the identification of gluten-free products (with a gluten level below 20 ppm).''

One comment stated that we should expressly prohibit ambiguous statements, such as ''No Gluten Added'' or ''Made from Gluten Free Ingredients.'' Other comments expressed similar sentiments about variations of similarly worded claims. One comment said that manufacturers use such statements to suggest that the product is suitable for individuals with celiac disease, while simultaneously attempting to avoid liability for any gluten in the product that could result from cross-contact or cross-contamination during the manufacturing process. Similarly, other comments urged us to prohibit other claims about the presence or absence of gluten ingredients unless the food meets FDA requirements for a ''gluten-free'' claim.

(Response 11) We agree that the final rule should clearly define the term ''gluten-free.'' Section 206 of FALCPA directs the Secretary to define and permit use of the term ''gluten-free'' in the labeling of foods. Although proposed § 101.91(a)(3) would have defined ''gluten-free'' and include ''or similar claim,'' we have revised the final rule to define the term ''gluten-free'' without referring to ''similar claims.'' A single definition should help individuals with celiac disease identify foods that they can tolerate, without having to wonder whether foods bearing different label claims present different risks, and thus manage their diets more easily. Furthermore, as the comments suggest, it may be confusing to define ''gluten-free'' in a manner that also attempts to capture ''similar claims.'' For example, as the comments indicate, a claim such as ''no gluten added'' might not be similar to ''gluten-free;'' instead, a ''no gluten added'' claim could mean that the manufacturer did not increase the food's gluten content during the manufacturing process beyond whatever level of gluten the food contained before manufacturing. While another comment suggested that we prohibit other claims, our experience with lists of examples, such as listing the products subject to a rule, indicates that it may be impractical to list more examples of ''similar'' claims. (See, e.g., 66 FR 59138 at 59144 (November 27, 2001) (''FDA's experience demonstrates that, despite FDA's intentions to provide advice or clarity, whenever the agency attempts to provide complete descriptions of the products that are subject to a particular regulation or part, the descriptions are either misconstrued as being exhaustive or definitive (so that persons whose products are not identified or even slightly different from the products mentioned in the description claim that they are exempt from the rule) or must be constantly revised to add new products and to remove old products'').

Nevertheless, we recognize that some companies use claims that are similar to our definition of ''gluten-free.'' Our experience with other content claims on foods suggests that claims that a food contains ''no gluten,'' is ''free of gluten,'' or is ''without gluten'' (the examples of ''similar claims'' in proposed § 101.91(a)(3)) would be misleading if the food does not meet the definition for ''gluten-free'' specified in § 101.91(a)(3) (Ref. 32). Consequently, we have revised § 101.91(b)(2) to state that, ''A food that bears the claim 'no gluten,' 'free of gluten,' or 'without gluten,' in its labeling and fails to meet the requirements of paragraph (a)(3) of this section will be deemed misbranded.'' In essence, we consider the statements ''no gluten,'' ''free of gluten,'' and ''without gluten,'' to be equivalent to a ''gluten-free'' claim. We use the term ''requirements'' to accurately describe the list of items in this paragraph. We discourage the use of statements in labeling about the gluten content of foods other than ''gluten-free'' and would evaluate any such statements under sections 403(a)(1) and 201(n) of the FD&C Act.

(Comment 12) Many comments requested that we establish a universal symbol/logo and/or a standardized print format for all manufacturers who wish to make a ''gluten-free'' claim on their food labels. The comments said that symbols, logos, or standardized print formats would make it easier for consumers to identify gluten-free foods, to reduce their time shopping, and to reduce possible confusion by having the same symbol appear in the same place using the same print format on foods bearing a ''gluten-free'' labeling claim. Comments from certification organizations suggested that consumers, particularly the most gluten-sensitive individuals, look for those symbols and understand what they mean.

Other comments opposed the use of a universal ''gluten-free'' symbol/logo. Some comments said that some manufacturers and grocery store chains have designed their own unique symbols/logos for identifying gluten-free foods and should be able to continue using these symbols/logos for labeling gluten-free foods or to use these symbols/logos on printed cards or other signs to call attention to gluten-free products sold in their stores. Still other comments noted several third party gluten-free certification programs that have developed their own specific ''gluten-free'' symbols/logos to identify foods that comply with particular criteria for a gluten-free food. One comment noted that some food companies seek independent, third-party certification for their gluten-free products. The comment urged us to not restrict the companies' use of certification programs or symbols. The comment said that inclusion of multiple ''gluten-free'' symbols on the same food or any restriction against continued use of third-party ''gluten-free'' certification program symbols/logos could make it more confusing or difficult for consumers to identify foods that met the criteria of those third-party ''gluten-free'' certification programs.

(Response 12) The proposed rule did not address the use of a universal symbol/logo, and we do not have any data indicating that mandating a universal symbol/logo is necessary to ensure that the claim is not false or misleading.

We are aware that some companies or organizations have developed specific phrases or symbols to indicate adherence to their own standards or to

the standards of an independent gluten-free certification program for foods that meet specific criteria. We would review the use of any gluten-related claim not addressed in the final rule under sections 403(a)(1) and 201(n) of the FD&C Act.

(Comment 13) One comment noted that the proposed rule would allow a food to be labeled ''gluten-free'' if it uses an ingredient derived from a prohibited grain that has been processed to remove gluten, but would not allow a food to be labeled ''gluten-free'' if it used a prohibited grain or used an ingredient derived from a prohibited grain, if the processing of the food (instead of the ingredient) results in the removal of gluten to below 20 ppm in the final product. The comment said that processes exist that remove gluten from foods produced with gluten containing ingredients, and suggested that because the processes that remove gluten can occur at any stage in production, from the preparation of the ingredients to the finished product, the final rule should allow the use of the term ''gluten-free'' regardless of when the gluten removing process occurs.

(Response 13) Comments indicate that individuals with celiac disease search for ''gluten-free'' claims and also review the ingredient statement for specific ingredients. The final rule limits the use of gluten-containing ingredients to ensure the food, as consumed, contains as little gluten as possible. Allowing the ''gluten-free'' label claim on food whose ingredients have been processed to remove gluten, but not on food that has been processed to remove gluten helps ensure that the finished product has the lowest amount of gluten that is reasonably possible, and consistent with the use of specific manufacturing practices that can prevent gluten cross-contact situations. We plan to issue a proposed rule to address our compliance approach to foods that are, or contain ingredients that are, fermented or hydrolyzed, as discussed in response to comment 14. We anticipate that the proposed rule will include a discussion related to the whether it is feasible, and if so, under what circumstances, to process food to remove gluten.

(Comment 14) Several comments responded to analytical methods-related issues raised in our 2011 notice regarding a scientifically valid method that can be used to accurately determine if foods that are or contain ingredients that are fermented or hydrolyzed (i.e., in which chemical components are decomposed by reaction with water) contain < 20 ppm gluten to support ''gluten-free'' claims. Other comments discussed whether we also should require these manufacturers to maintain records on test methods, protocols, and results and to make these records available to FDA upon inspection.

Some comments, primarily from manufacturers of gluten detection test kits or the food industry, asserted that there are some competitive enzyme-linked immunosorbent assay (ELISA)-based methods that can accurately detect and measure gluten concentration levels in fermented and hydrolyzed foods as low as 0.24 mg/100 g or 2.4 ppm. These comments also maintained that these methods were validated to ensure that they perform reliably and can report test results in terms of intact gluten concentration or ppm gluten. Several other comments, particularly from those with celiac disease, celiac disease associations, or health professionals, wanted FDA to require records of test methods, protocols, and results to permit ''gluten-free'' claims on fermented or hydrolyzed foods. Some comments wanted the recordkeeping requirements to apply to all foods bearing a ''gluten-free'' claim.

(Response 14) We routinely rely upon scientifically valid methods [1] in our enforcement programs on food labeling. However, we are aware that currently available sandwich ELISA-based methods are not effective in detecting and quantifying intact gluten proteins in fermented and hydrolyzed foods. The sandwich ELISA-based methods designed to detect gluten require the presence of two antigenic epitopes and are not appropriate for fermented and hydrolyzed products.

In comparison to sandwich ELISA-based methods, competitive ELISA-based methods need the presence of a single antigenic epitope. However, without an appropriate reference standard to gauge the response, one cannot interpret the results on a quantitative basis that equates the response to intact gluten. Evidence in the scientific literature is currently lacking about a scientifically valid competitive ELISA method which confirms that any gluten peptides detected in a food sample can be accurately quantified in terms of ppm intact gluten protein. Therefore, we do not consider these methods scientifically valid for the purposes of analyzing fermented or hydrolyzed foods to determine compliance with this rule under § 101.91(c). We intend to issue a proposed rule to address how FDA will evaluate compliance with § 101.91(b) when an evaluation of compliance based on an analysis of the food using a scientifically valid method under § 101.91(c) is not available because the food is fermented or hydrolyzed or contains fermented or hydrolyzed ingredients. We intend to consider the need for issuing guidance for these foods to the extent the proposed rule does not issue before the compliance date for this final rule.

A ''gluten-free'' claim will be permitted on fermented and hydrolyzed foods or foods containing fermented or hydrolyzed ingredients that meet all of the requirements for bearing a ''gluten-free'' claim even though the gluten content of the food cannot be reliably measured pursuant to § 101.91(c). Until we establish provisions specifically for these foods, through further rulemaking, as is true for all food manufacturers who wish to use ''gluten-free'' labeling on their food, manufacturers of fermented or hydrolyzed foods or foods that use fermented or hydrolyzed ingredients are responsible for ensuring that the food bearing a ''gluten-free'' claim is not misbranded for failure to meet all of the requirements of the final rule. Manufacturers can implement measures that are necessary to prevent the introduction of gluten into the food during the manufacturing process to ensure that the finished product will comply with the provisions in § 101.91.

(Comment 15) Several comments concerned ''gluten-free'' labeling claims on beers. Some comments wanted FDA to allow beers to be labeled ''gluten-free'' if the beers contained less than 20 ppm gluten. One comment stated that, in some European countries, the traditional brewing processes for barley malt-based beers have been modified to ensure that beers labeled as ''gluten-free'' contain significantly less than 20 ppm of gluten.

In contrast, other comments favored prohibiting the use of a ''gluten-free'' claim on the label of beers made from gluten containing ingredients but were later ''reduced'' in gluten due to the processing methods.

(Response 15) The Alcohol and Tobacco Tax and Trade Bureau (TTB) is responsible for the issuance and enforcement of regulations with respect to the labeling of beers that are malt beverages under the Federal Alcohol Administration Act (FAA Act). Certain beers do not meet the definition of a malt beverage under the FAA Act (27

[1] As noted in the 2011 notice, a scientifically valid method for purposes of substantiating a ''gluten-free'' claim for foods matrices where formally validated methods (e.g., that underwent a multi-laboratory performance evaluation) do not exist is one that is accurate, precise, and specific for its intended purpose and where the results of the method evaluation are published in the peer-reviewed scientific literature. In other words, a scientifically valid test is one that consistently and reliably does what it is intended to do.

U.S.C. 211(a)(7)). These beers are not subject to the labeling requirements under the FAA Act and are subject to the labeling requirements administered by FDA (Ref. 33).

On May 24, 2012, TTB issued an interim policy on gluten content statements in the labeling and advertising of beverages or beers they regulate. The ''Interim Policy on Gluten Content Statements in the Labeling and Advertising of Wines, Distilled Spirits, and Malt Beverages'' allows the use of the following qualifying statement to inform consumers: ''Product fermented from grains containing gluten and [processed or treated or crafted] to remove gluten. The gluten content of this product cannot be verified, and this product may contain gluten,'' or ''This product was distilled from grains containing gluten, which removed some or all of the gluten. The gluten content of this product cannot be verified, and this product may contain gluten.'' (TTB Ruling No. 2012–2, May 24, 2012, available at *http://www.ttb.gov/rulings/2012-2.pdf*)

Beers subject to FDA's labeling requirements are those beers that are not made from both malted barley and hops but are instead made from either malted barley and no hops or with substitutes for malted barley (for example sorghum, millet, rice or buckwheat) with or without hops. Other beers subject to FDA's labeling requirements not brewed from gluten-containing grains may contain gluten through cross-contact with gluten-containing grains or ingredients during processing. (We also note that, for purposes of this discussion, we do not consider saké and similar products to be ''beers.'' Saké and similar products are treated as wine under the FAA Act and are subject to FDA's labeling requirements only if they contain less than 7 percent alcohol by volume.)

Beers are among the foods subject to fermentation during manufacturing. As discussed in our response to comment 14, we intend to issue a proposed rule to address how FDA will evaluate compliance with § 101.91(b) when an evaluation of compliance based on an analysis of the food using a scientifically valid method under § 101.91(c) is not available because the food is fermented or hydrolyzed or contains fermented or hydrolyzed ingredients.

We intend to address the ''gluten-free'' labeling of beers subject to FDA's labeling requirements in that proposed rule. However, the issues with respect to the labeling of FDA-regulated beers as gluten-free go beyond the question of how compliance can be verified. First, we note that consumers might not distinguish between those beers subject to FDA's labeling requirements and those beers subject to TTB's labeling requirements. Second, some comments have claimed that beers made from gluten-containing grains can be processed in a way that removes gluten. We are aware of a limited number of such products in the market. As with other fermented foods, we are not aware of any scientifically valid way to evaluate these claims, and there is inadequate evidence in the record concerning the effectiveness of the commenters' gluten removal process. We want to avoid any changes to labels that may cause further confusion with regard to ''gluten-free'' beer until we issue the separate rule on gluten-free labeling of hydrolyzed and fermented foods.

In light of these considerations, we intend to exercise enforcement discretion with respect to the requirements for ''gluten-free'' labeling for beers subject to FDA labeling requirements. Our consideration for enforcement discretion would extend to beers that currently make a ''gluten-free'' claim and that are: (1) Made from a non-gluten-containing grain or (2) made from a gluten-containing grain, where the beer has been subject to processing that the manufacturer has determined will remove gluten. This enforcement discretion pertains only to these beers subject to our labeling requirements that make a ''gluten-free'' claim as of August 5, 2013 pending completion of the rulemaking process with respect to fermented or hydrolyzed products. To the extent that a beer manufacturer wants to make a new gluten-free claim that is not present on a label as of August 5, 2013, they should contact FDA regarding the possible expansion of FDA's consideration for the exercise of enforcement discretion related to such labeling.

FDA expects beer manufacturers using a ''gluten-free'' claim to take appropriate measures to prevent cross-contact with gluten-containing grains during production, processing, storage, or other handling practices. We note that beer manufacturers, whose beers are subject to FDA's labeling requirements, that make beer from a gluten-containing grain or from non-gluten-containing grains are not precluded from using other statements on the label, such as a gluten statement consistent with the TTB guidance, about processing of beers to reduce gluten. However, such statements must be truthful and not misleading. Beers bearing a ''gluten-free'' claim, or other statements related to the gluten processing or content other than ''gluten free,'' are still subject to sections 403(a)(1) and 201(n) of the FD&C Act.

(Comment 16) Several comments claimed that individuals with celiac disease are concerned that gluten-containing ingredients used in food products may not be readily identifiable in the list of ingredients on food packages. The comments suggested that ingredients declared as ''flavoring'' or ''modified food starch'' could contain gluten or ingredients derived from gluten-containing grains. Some comments suggested that we require the source of these ingredients be declared on the label for foods bearing the ''gluten-free'' labeling claim.

(Response 16) We recognize that, in some situations, an ingredient that is a ''flavoring'' or ''modified food starch'' may be derived from a gluten-containing grain but nonetheless be present in a food bearing a ''gluten-free'' label. We note that the use of the ''gluten-free'' claim on a food label is voluntary and does not replace or eliminate any other labeling requirements. Wheat is a major food allergen under FALCPA and any food that is, or contains an ingredient that bears or contains, a major food allergen under section 201(qq) of the FD&C Act must declare either the word ''Contains'' followed by the name of the food source from which the major food allergen is derived, or the common or usual name of the major food allergen in the list of ingredients followed in parentheses by the name of the food source unless subject to an exception (section 403(w)(1) of the FD&C Act). A flavoring, coloring, or incidental additive that is, or that bears or contains, a major food allergen is subject to the labeling requirements of section 403(w)(4) of the FD&C Act. Section 101.91(b)(1) of the final rule states that we will consider a food bearing the claim ''gluten-free'' in its labeling to be misbranded if it fails to meet the requirements of paragraph (a)(3) of this section, which includes the requirement that any ingredient derived from a gluten-containing grain be processed to remove gluten such that its use in the finished product does not result in 20 ppm or more gluten in the food. Therefore, this final rule does not change the current labeling requirements for major food allergens, including wheat. To the extent the comment requests that we require that *all* ingredients in flavorings be listed in the ingredient statement, the request is outside the scope of this rulemaking.

(Comment 17) A few comments suggested that we establish a gluten limit for ingredients derived from gluten-containing grains that have been

processed to remove gluten. One comment suggested 20 ppm as a reasonable limit to set for safety and ease of testing. Another comment suggested that if ingredients derived from gluten-containing grains must be used, and if the food complies with the maximum gluten content of 20 ppm, market practice will impose the same requirement at the ingredient level.

(Response 17) We decline to revise the rule to establish a specific gluten limit for ingredients derived from a gluten-containing grain that have been processed to remove gluten. As we discussed in the preamble to the proposed rule (72 FR 2795 at 2802), although ingredients such as wheat starch, are processed to remove gluten, there may be different methods of deriving these ingredients, and some methods may remove less gluten than others. The final rule provides that the use of such ingredients must not result in the presence of 20 ppm or more gluten in the finished food (i.e., 20 mg or more gluten per kg of food). To use additional adjectives to indicate that these ingredients have been ''significantly'' or ''substantially'' reduced in gluten would have little meaning given the variability in the gluten levels in the starting materials and the various processes used. Likewise, to establish gluten thresholds for these specific ingredients would add criteria to the definition of ''gluten-free'' that do not offer additional benefit to the protection of public health beyond those provided by the definition of ''gluten-free.''

We agree that, as more manufacturers use ingredients derived from gluten-containing grains that have been processed to remove gluten, the market may respond by producing more ingredients that have been processed to reduce the gluten content even further and supporting the use of such ingredients in food products that meet the definition of ''gluten-free.'' Thus, we encourage suppliers of ingredients derived from a gluten-containing grain to process those ingredients using appropriate controls to achieve gluten content below 20 ppm. Manufacturers that are producing ''gluten-free'' foods may be more inclined to buy ingredients from suppliers that can produce ingredients with gluten content levels below 20 ppm. We would expect such manufacturers, as part of good manufacturing practice, to test the ingredient itself to ensure the gluten level in the ingredient is below 20 ppm. Alternatively, we would expect such manufacturers, as part of good manufacturing practice, to rely on a certificate of analysis for the ingredient, and to verify the accuracy and reliability of the certificate of analysis ensuring that the ingredient contains less than 20 ppm gluten. Such a certificate of analysis would be based on initial qualification and periodic re-qualification of the supplier through testing of the ingredient with sufficient frequency or at least once per year.

(Comment 18) One comment suggested that any commingling or cross-contact that may occur should not be evaluated under the < 20 ppm element of the definition, at least until such time as a safety-based threshold is established that would justify such inclusion. The comment asked that the final rule not condition voluntary use of the term ''gluten-free'' on whether a food contains 20 ppm or more gluten ''for any reason'' or on whether the product does not contain 20 ppm or more gluten if the product is made from oats.

(Response 18) The 20 ppm gluten threshold level is just part of the criteria used to define ''gluten free.'' The < 20 ppm part of the criteria for the definition of ''gluten-free'' is based on an analytical methods-based approach, not a safety-assessment-based approach. We recognize that gluten may be present in a food either because it is a component of an ingredient used to produce that food or through cross-contact during production, processing, storage, or other handling practices. Therefore, it is appropriate to use the same definition both for foods that have been formulated or processed not to contain 20 ppm or more gluten and for the presence of gluten in foods that do not inherently contain gluten, such as oats.

(Comment 19) Some comments expressed concern about some foods currently labeled as ''gluten-free'' having gluten content at or above 20 ppm or that many foods labeled ''gluten-free'' would contain the maximum permissible level of gluten near but still below 20 ppm.

(Response 19) Under the final rule, foods can no longer be labeled ''gluten-free'' if they contain 20 ppm or more gluten. The final rule uses an analytical methods-based approach to establish a gluten content of < 20 ppm as part of the criteria for defining the term ''gluten-free.'' Given the current unavailability of test methods that can reliably detect gluten at levels below 20 ppm, we conclude that ''gluten-free'' labeling on a food that contains less than 20 ppm gluten would be neither false nor misleading, so long as it conforms to all aspects of the final rule.

As for the comments expressing concern about some foods currently labeled as ''gluten-free'' having gluten content at or above 20 ppm, data submitted in comments to the proposed rule indicate that many products that are currently labeled as ''gluten-free'' have gluten content well below 20 ppm gluten. In addition we note that in surveys that have been conducted for foods labeled as gluten-free, available for sale in Canada, most samples contained less than 20 ppm of gluten (Ref. 27 at p. 4).

2. Requirements (§ 101.91(b))

Proposed § 101.91(b) would establish three different requirements relating to the use of a ''gluten-free'' labeling claims.

a. *Use of the ''gluten-free'' claim or similar claims.* Proposed § 101.91(b)(1) would state that ''A food that bears a ''gluten-free'' claim or similar claim in its labeling and fails to meet the conditions specified in paragraph (a)(3) of this section will be deemed misbranded.''

As we discussed earlier in our response to comment 11, the final rule now defines the term ''gluten-free'' without referring to ''similar claims'' or providing examples of similar claims. Section 101.91(b)(2) of the final rule states: ''A food that bears the claim 'no gluten,' 'free of gluten,' or 'without gluten' in its labeling and fails to meet the requirements of paragraph (a)(3) of this section will be deemed misbranded.'' In essence, we consider the statements ''no gluten,'' ''free of gluten,'' and ''without gluten'' to be equivalent to a gluten-free claim. We are planning educational efforts to help consumers learn that when they see foods labeled as being ''gluten-free,'' the term will have a consistent meaning and, therefore, be a reliable tool when planning a gluten-free diet.

On our own initiative, we also have revised § 101.9(b)(1) to refer to ''the requirements of paragraph (a)(3) of this section'' instead of ''the conditions specified in paragraph (a)(3) of this section.'' This change corresponds to the language used in § 101.91(b)(2) of the final rule.

b. *Foods that do not inherently contain any gluten.* Proposed § 101.91(b)(2) would apply to foods that do not inherently contain any gluten from a prohibited grain (now referred to as a gluten-containing grain in the final rule), but would exclude foods made from oats. In brief, proposed § 101.91(b)(2) would consider such foods that bear a ''gluten-free'' claim to be misbranded unless the claim ''refers to all foods of that same type (e.g., 'milk, a gluten-free food,' 'all milk is gluten-

free')'' and the food does not contain 20 ppm or more gluten.

We invited comments and scientific information on whether a ''gluten-free'' claim on an inherently gluten-free food would be misleading in the absence of additional qualifying language.

(Comment 20) While a few comments supported proposed § 101.91(b)(2) as written, most comments expressed significant confusion as to the requirements for labeling foods inherently free of gluten. Numerous comments expressed concern that the rule would result in foods inherently free of gluten being deemed misbranded or ''illegal'' if they claimed to be ''gluten-free.'' The comments did not appear to understand that the proposed rule would find these foods misbranded only if they omitted the qualifying language when they claimed to be ''gluten-free'' (assuming they met the other criteria for a ''gluten-free'' labeling claim).

Other comments discussed the proposed qualifying language. The comments expressed concern that, in many instances, it would be misleading to suggest that a particular food or food category is always gluten-free. Some comments referred to the issues discussed in our analysis of oats in the proposed rule (72 FR 2795 at 2801), noting that cross-contact with gluten-containing ingredients can and does occur in virtually any facility where gluten-containing ingredients are present. One comment stated that ''requiring that inherently gluten-free foods electively labeled 'gluten-free,' declare that all such foods are gluten-free, is to deny the cross-contact risks to which many inherently gluten-free foods are regularly exposed. Furthermore, requiring such a statement devalues the efforts of manufacturers who employ exhaustive measures to remedy those risks of cross-contact. That type of reference, in effect, tells the consumer that foods labeled 'gluten-free'—and subject to federal regulations—are no more safe than those bearing no claim at all. Enforcing a requirement of such an advisory will perpetuate the confusion and risks to individuals with celiac disease that FALCPA is expected to undo.''

Other comments noted that certain foods of the same type may be available in flavored and unflavored forms or with additional ingredients that may contain traces of gluten. Many comments cautioned that, if one product used a ''gluten-free'' claim with the qualifying language (i.e., a statement that all foods of that type are gluten-free), some consumers may pick a flavored or formulated, gluten-containing version of the product and mistakenly believe that it also is inherently free of gluten. A few comments suggested that the proposed qualifying language for foods that inherently do not contain gluten would only be appropriate for single ingredient foods which are not flavored nor have added ingredients. Several comments urged us to allow an unqualified ''gluten-free'' claim if the food meets the definition of ''gluten-free.'' They emphasized that this unqualified labeling would be useful to consumers who are seeking gluten-free products.

Other comments explained that the proposed additional clarifying wording indicating that all foods of the same type, not just the brand bearing ''gluten-free'' labeling claim, also are free of gluten could compel manufacturers to make representations about all products in a given category, including products that the manufacturer does not make or cannot control. Some comments explained that companies are willing to support that their own products may bear a ''gluten-free'' claim (< 20 ppm gluten), but do not wish to make a statement suggesting that other companies have made the same determination or have the same controls or manufacturing practices to minimize or prevent contact with gluten.

Many comments suggested that we establish a simple ''gluten-free'' claim, regardless of whether the product is inherently gluten-free or formulated to be gluten-free. To minimize consumer confusion, many comments suggested that the final rule allow a ''gluten-free'' claim on products that have been processed in a manner that ensures the products meet the definition of ''gluten-free'' and contain less than 20 ppm gluten. The comments also suggested that consumers seeking to avoid gluten do not care if the food is inherently (or ''naturally'') gluten-free or processed to remove gluten by formulation or ingredient substitution.

Other comments explained that the proposed requirements for qualifying language could have an unintended consequence as it could cause companies to stop labeling their products as ''gluten-free,'' rather than deal with misbranding issues. The comments indicated that such a result would frustrate consumers because there would be fewer foods labeled as ''gluten-free.''

(Response 20) We understand how the proposal's additional clarifying language for foods inherently free of gluten could cause confusion and concern for the consumers seeking foods with a ''gluten-free'' labeling claim. We agree with the comments stating the requirement for qualifying language on foods that inherently do not contain gluten could be interpreted as saying that it is the nature of the food, rather than the care provided by the company making the ''gluten-free'' claim, that ensures the product meets the definition of ''gluten-free.'' Likewise, we agree with the comments suggesting that, in this situation, requiring companies using the ''gluten-free'' claim to add the qualifying language that all foods of the same type are also gluten-free would, in effect, require the companies to make representations as to the gluten-free status of products outside of their control. We agree that such qualified labeling on one brand of food that inherently does not contain gluten could mislead consumers into assuming that a flavored or formulated gluten-containing version of that product is also gluten-free, and could result in an individual with celiac disease consuming gluten and possibly suffering negative health consequences as a result.

Consequently, we conclude that a ''gluten-free'' claim, without qualifying language, on a food that is inherently free of gluten is not misleading. We have revised the final rule so that a food labeled as ''gluten-free'' must meet the definition of ''gluten-free'' in § 101.91(a)(3), but will not require additional qualifying language. This final rule will allow us to determine whether specific ''gluten-free'' labeling claims are misleading on a case-by-case basis. A food bearing a ''gluten-free'' label must meet each of the relevant criteria in the ''gluten-free'' definition, and qualifying language would not be necessary for consumers to understand the meaning of the term ''gluten-free'' with respect to other foods, including those that may also be inherently free of gluten. There may be inherently gluten-free foods that still may not meet the definition of ''gluten-free'' due to cross-contact with gluten that leads to gluten content in the food that are at or above 20 ppm. There also may be inherently gluten-free foods that have some cross-contact with gluten-containing products, but are still able to bear the ''gluten-free'' claim because the presence of gluten in the food due to cross-contact is less than 20 ppm. Thus, the approach we have taken in the final rule should result in labeling that is easier for consumers to understand. We note that, in changing our approach to ''gluten-free'' claims on inherently gluten free foods we are making a determination that, in many situations ''gluten-free'' labeling is unlike the ''free'' labeling claims (nutrient content

claims) made for foods inherently free of calories, nutrients such as sodium or fat, and other food substances such as cholesterol (see 21 CFR 101.13(e)(2) and 72 FR 2795 at 2802). The general rationale behind the labeling of ''free'' claims is that, as we explained in the preamble to the proposed rule, ''[i]f a single brand of food inherently free of the substance that is the subject of its 'free' labeling claim does not also include additional qualifying language, consumers may mistakenly assume that only the particular brand of the food is free of the substance and may not understand that other brands of the same type of food that do not make the 'free' labeling claim are also free of the substance'' (See id.). As noted previously, some comments challenged the logic of that rationale in the context of gluten-free labeling and indicated that firms did not want to make representations as to the gluten-free status of products outside of their control, because it could result in adverse health consequences to consumers. We concur with these comments.

We have removed proposed § 101.91(b)(2) and its subparagraphs (i) and (ii), and we reorganized the final rule to include § 101.91(a)(3)(i)(B) stating that the definition applies if the food inherently does not contain gluten and, as stated in § 101.91(a)(3)(ii), any unavoidable presence of gluten in the food is below 20 ppm gluten.

3. Compliance (§ 101.91(c))

Proposed § 101.91(c) would indicate that, when compliance is based on an analysis of a food, we would ''use a method that can reliably detect the presence of 20 ppm gluten in a variety of food matrices, including both raw and cooked or baked products.'' In the 2011 notice, we stated our tentative conclusion that the analytical methods we would use to assess compliance with the < 20 ppm gluten content ''should be specified in codified language'' (76 FR 46671 at 46673). However, the 2011 notice also stated that we recognized that some food matrices, such as fermented or hydrolyzed foods, may lack currently available scientifically valid methods that can be used to accurately determine if these foods contain < 20 ppm gluten (id.). In such cases, we indicated that we were considering whether to require manufacturers of such foods to have a scientifically valid method that will reliably detect gluten at 20 ppm or less before including a ''gluten-free'' claim in the labeling of their foods.

(Comment 21) Several comments addressed whether the final rule should specify the analytical methods we would use to assess compliance. In general, the comments advised against specifying analytical methods in the rule. One comment, for example, said that a number of adverse effects could result, including:

- The possibility that the analytical methods we chose would become outdated quickly. The comment indicated that there are two or more additional commercially available test kits that offer peer reviewed performance that is at least equivalent to the analytical methods (the ELISA R5-Mendez Method and the Morinaga method) we had identified in the 2011 notice (76 FR 46671 at 46672).
- Limiting the testing options for food manufacturers and regulatory and commercial laboratories. The comment expressed concern that identifying specific analytical methods in the final rule could result in problems when a specific kit becomes unavailable on a temporary basis or if the kit was changed or removed from market for any reason.
- Limiting our flexibility to use improved technology as it becomes available and dissuading test kit manufacturers from developing improved methods.

Another comment supported our selection of the ELISA R5-Mendez Method, but stated that ''analysts should be free to use any method that provides comparable results'' and that ''other methods may be equivalent.'' Another comment urged us to ''remain flexible as to the method of test validation'' and added that not specifying analytical methods would ''permit a more rapid development of dependable and affordable technologies for testing gluten.'' Additional comments recommended that FDA develop performance criteria rather than identify particular analytical methods to enable the widest choice among gluten-detection methods that the Agency and other entities could consider using to determine compliance with a ''gluten-free'' claim. However, the comments did not provide any data or information on performance criteria that FDA should consider.

(Response 21) Upon further consideration, we agree that specifying the analytical methods in the final rule could limit our flexibility and possibly deter the development of new and better analytical methods. We also note that specifying the analytical methods we would use for compliance purposes, as part of the final rule, would not be binding on food manufacturers because neither the proposed rule nor this final rule requires them to use the same analytical methods to determine the gluten content. To the extent that food manufacturers or other interested parties want to know the specific scientifically valid method we intend to consider using when determining compliance, we can identify this method through other means (such as through a guidance document).

If we were to specify analytical methods in the final rule that FDA is to use to determine compliance with the final rule, and the methods are revised, we would have to, by regulation, change the methods specified in the rule. The revisions to the methods may be more than a technical change and require notice and comment rulemaking. As one comment recognized, if we had to engage in rulemaking to revise or update analytical methods, we would run the risk that the analytical methods specified by regulation would become outdated or obsolete quickly (especially if the methods were revised or updated frequently) and that we would deter the development of better test methods. We have, however, revised § 101.91(c) by inserting ''scientifically valid'' before ''method'' to make clear that we will use a scientifically valid method for purposes of compliance testing.

As for the comments regarding the use of performance criteria, the comments did not provide any data and information on which the Agency could rely to support such an approach. Therefore, we are not making changes in response to this comment.

(Comment 22) Many comments discussed how manufacturers might comply with the rule. The comments asked that we require foods (including oats) to be ''certified'' or verified that they do not contain 20 ppm or more gluten and to meet all other FDA requirements for a gluten-free food before being labeled ''gluten-free.'' The comments argued that certification would provide assurance that foods bearing this claim do not contain levels of gluten at or above 20 ppm. Many comments expressed the concern that cross-contact with gluten-containing ingredients could result in the inadvertent presence of gluten in a food labeled ''gluten-free.''

(Response 22) We decline to revise the rule to require certification that foods comply with the definition and requirements regarding a ''gluten-free'' claim. Under sections 403(a)(1) and 201(n) of the FD&C Act, manufacturers must ensure that all statements they include on their food labels are truthful and not misleading. The final rule defines the term ''gluten-free,'' but does not require manufacturers to use a

particular test methodology or to certify their products.

Additionally, given the range of food products and methods of manufacturing, it would be impractical and an inefficient use of our resources for us to require, through regulation, a precise manner in which manufacturers must or should certify or verify the gluten content of their products. Manufacturers are free to develop their own methods that best suits their particular needs to determine the gluten content of their products. In addition, other methods may be used for quality control, specifications, contracts, surveys, and similar non-regulatory functions. Some companies may choose, but are not required, to have third parties certify or verify the gluten content of their product to ensure their products labeled as ''gluten-free'' are within the definition of ''gluten-free.''

4. Miscellaneous Comments

Several comments addressed matters that were not specific to a particular provision in the proposed rule or issues not covered by the rule. We address those comments here.

(Comment 23) In the preamble to the proposed rule, we recognized that even those foods that comply with the proposed definition of ''gluten-free'' nonetheless could contain some amount of gluten up to 20 ppm (72 FR 2795 at 2803). We questioned whether the potential presence of some gluten below 20 ppm would be a material fact that would make a ''gluten-free'' claim potentially misleading. We invited comments on whether the use of additional qualifying language (e.g., ''does not contain 20 ppm or more gluten per gram of food'') would be necessary to inform individuals with celiac disease that a food labeled as ''gluten-free'' nonetheless may contain the amount of gluten permitted under whatever threshold level is established in the final rule. The 2011 notice repeated the invitation for comments and provided an example of such qualifying language in the form of ''a possible asterisk after the term 'gluten-free' and an associated statement that says, e.g., 'does not contain 20 ppm or more gluten' '' (76 FR 46671 at 46675).

We received comments both supporting and opposing the addition of language to indicate that foods labeled ''gluten-free'' could have the potential presence of less than 20 ppm gluten in the product. Comments supporting the inclusion of this language on the label explained that this would inform consumers about the meaning of the ''gluten-free'' claim. Many comments indicated that the public should receive truth in labeling and therefore the label should indicate the presence of even trace amounts of gluten.

In contrast, comments opposing the additional qualifying language stated that it would likely confuse consumers without providing any additional benefits. One comment noted that there appears to be no other health-related claims (e.g., fat-free, sugar-free, low-sodium) that define or further qualify the regulatory definition via additional labeling statements and that ''a good labeling regulation does not distort a valid, established public health standard.'' In addition, some comments suggested the additional language could discourage manufacturers from making a ''gluten-free'' claim on products that are inherently gluten-free and produced under cGMPs. The comments said that manufacturers whose foods had gluten content well below 20 ppm could refrain from labeling their food as ''gluten-free'' because the qualifying language could mislead consumers into assuming most products contain the maximum levels of gluten.

(Response 23) We agree with the comments opposing the use of qualifying language to inform individuals with celiac disease that a food labeled as ''gluten-free'' nonetheless may contain less than 20 ppm of gluten because the final rule defines the criteria and requirements for the ''gluten-free'' labeling claim. The lawful use of the federally defined term ''gluten-free'' on a food label will inform both consumers and industry of the fact that the food bearing the ''gluten-free'' claim may not contain 20 ppm or more gluten. Education and outreach programs will be important to ensure that individuals with celiac disease and other consumers understand the definition and the changes set forth by these regulations.

We also agree with the comment that additional qualifying language that would, in effect, restate § 101.91(a)(3) would be inconsistent with other FDA regulated labeling claims (e.g., fat-free, sugar-free) that define the term without the need to further qualify that regulatory definition elsewhere on the label.

We also agree with the comments suggesting that additional qualifying language could create a disincentive for manufacturers to make a ''gluten-free'' claim. For example, if a manufacturer's food had less than 5 ppm gluten, but the final rule would require the manufacturer to state ''does not contain 20 ppm or more gluten'' in addition to the ''gluten-free'' claim, the manufacturer might decide to remove the ''gluten-free'' claim rather than risk creating the misimpression that its food contained up to 20 ppm gluten. Additionally, if a manufacturer could improve its manufacturing or processing operations to create a food with less than 5 ppm gluten, but the final rule would require the statement of ''does not contain 20 ppm or more gluten,'' the manufacturer might decide to forego those improvements because the statement would only refer to ''20 ppm or more gluten.'' Requiring the additional qualifying language, therefore, could result in fewer ''gluten-free''-labeled foods being available and limit the ability of individuals with celiac disease to follow a gluten-free diet.

We do not agree with the comments supporting the additional qualifying language. While we acknowledge the desire of some consumers to know the exact gluten content of foods, we adopted an analytical methods-based approach, with a threshold level of 20 ppm gluten, because we determined that this level is appropriate, enforceable, and practical after considering multiple types of information, including the scientific literature on the sensitivity of consumers with celiac disease and information on the methods available to reliably detect and quantify gluten in a wide variety of foods.

Therefore, the final rule does not require the use of additional qualifying language (e.g., ''does not contain 20 ppm or more gluten'') to inform individuals with celiac disease that a food labeled as ''gluten-free'' nonetheless may contain less than 20 ppm gluten.

(Comment 24) A few comments asked about the inclusion of wheat starch in foods labeled ''gluten-free.'' Proposed § 101.91(a)(3)(iii) would allow a food to bear a ''gluten-free'' claim provided that any ingredient that is derived from a prohibited grain has been processed to remove gluten (e.g., wheat starch), if the use of the ingredient does not result in the presence of 20 ppm or more gluten in the finished food. Wheat starch is an ingredient derived from wheat (a gluten containing grain) that has been processed to remove gluten. As discussed in our response to comment 17 (regarding a < 20 ppm gluten content level applied to individual ingredients), a comment suggested that if ingredients derived from gluten-containing grains must be used, and if the food complies with the maximum gluten content of < 20 ppm, market practice will impose the same requirement at the ingredient level (in other words, ingredient purchasers will require that the ingredients contain less than 20 ppm gluten). Several comments submitted by

individuals with celiac disease indicated that they would not purchase a product that included the term ''wheat'' within the ingredient list. The comments noted that because wheat is considered a ''major food allergen'' under FALCPA the term wheat could appear either in the list of ingredients or in a separate ''Contains wheat'' statement near the list of ingredients. One comment said that if wheat must be identified on the label of a food that also bears a ''gluten-free'' claim, consumers will not be able to determine whether the food is appropriate for them to consume and will have to avoid the food. The comment suggested that the result would be an unnecessary restriction in an already restrictive diet and also suggested that individuals with celiac disease will receive a confusing message that wheat starch in food labeled ''gluten-free'' is acceptable, but wheat starch in other foods must be avoided.

(Response 24) We agree that individuals with celiac disease would receive a confusing message if foods bearing a ''gluten-free'' claim also include the term ''wheat'' in the ingredient list or in a ''Contains'' statement, as required by FALCPA (Ref. 34). Although we were unable to identify many products bearing a ''gluten-free'' claim that also have the term ''wheat'' appearing in the ingredient list, a food may bear both a ''Contains wheat'' statement under § 101.91(b)(3) of the final rule and a ''gluten-free'' claim or a claim identified in § 101.91(b)(2) of the final rule and be in compliance with both section 203 of FALCPA (regarding food labeling for allergenic substances) and the ''gluten-free'' label regulation arising from section 206 of FALCPA. In such situations, § 101.91(b)(3) requires that the labeling also bear the statement that ''The wheat has been processed to allow this food to meet FDA requirements for gluten-free foods,'' preceded by an asterisk (*) or other symbol that links this statement to the word ''wheat,'' either in the ingredient list or the ''Contains wheat'' statement, depending on how the allergen declaration is made. Without this statement, a food that identifies the presence of wheat either in the ingredient statement or in a ''Contains wheat'' statement under § 101.91(b)(3) and bears a ''gluten-free'' claim under § 101.91(a)(3)(i)(A)(*3*) will be deemed misbranded.

We also included ''or a claim identified in paragraph (b)(2) of this section'' in § 101.91(b)(3) to clarify that this disclaimer is also needed when a food bears the term ''wheat'' in the ingredient list or a separate ''Contains wheat'' statement and also contains a ''no gluten,'' ''free of gluten,'' or ''without gluten'' claim.

(Comment 25) The preamble to the proposed rule acknowledged that at least one other regulatory body outside the United States has developed a two-tiered approach to gluten-related food labeling (72 FR 2795 at 2804). Australia and New Zealand have established standards for ''gluten-free'' (meaning no detectable gluten) and a less restrictive standard for ''low-gluten'' (meaning no more than 20 mg gluten per 100 g of the food, which is equivalent to no more than 200 ppm gluten in the food) (Ref. 28). The preamble to the proposed rule also discussed the possible development of a similar 2-tiered approach to gluten-related food labeling in the United States (72 FR 2795 at 2811 through 2812). At the time we issued the proposed rule, we tentatively had concluded that a two-tiered approach was not feasible because we do not have sufficient scientific data to recommend a specified level of gluten to define the term ''low gluten.'' We invited comments on this tentative conclusion, including comments on a possible scientific basis for setting a level of gluten to be defined as ''low gluten.''

Several comments addressed the issue of ''low-gluten,'' ''very low-gluten'' or other tiered gluten labeling claims. Most comments opposed tiered gluten labeling claims. The comments agreed with us that there is no scientific basis for these claims and such claims would not benefit individuals with celiac disease. For example, many comments noted a preference for a single definition of ''gluten-free,'' stating that a dual definition of ''gluten-free'' and ''low-gluten'' would be confusing. The comments suggested that terms implying various gluten content levels may confuse individuals with celiac disease who are advised to follow a gluten-free diet rather than one that is low in gluten or gluten-reduced. Comments opposed to the use of ''low-gluten'' claims or tiered gluten labeling also expressed concerns that these other claims may influence individuals with celiac disease to substitute such foods for foods labeled ''gluten-free'' and thereby jeopardize their health.

Other comments said we should establish a tiered gluten labeling system allowing individuals with celiac disease, especially those very sensitive to gluten, to distinguish between foods that do not have any gluten and those that contain a trace amount of gluten. Most comments expressing this opinion favored defining ''gluten-free'' to mean either zero, no detectible, or < 5 ppm gluten and defining the term ''low-gluten'' to mean a greater amount of gluten than allowed for a ''gluten-free'' food, but no more than 20 ppm (e.g., < 5 ppm or < 10 ppm for a ''low-gluten'' claim). Some comments said we should consider allowing ''low-gluten'' claims consistent with those used in other countries. Several comments expressed support for the two-tiered gluten labeling system in effect in Australia and New Zealand. One comment suggested the term ''celiac safe'' to mean < 20 ppm and another comment suggested the terms ''Gluten-0'' for no gluten, ''Gluten-5'' or ''Lo Gluten 5'' for no more than 5 ppm gluten, and ''Gluten-20'' or ''Lo Gluten 20'' for no more than 20 ppm gluten).

(Response 25) We decline to define the terms ''low-gluten,'' ''very-low gluten,'' or other terms mentioned by the comments or to adopt a tiered gluten labeling system. We agree with comments that stated that tiered labeling claims would likely be confusing to those with celiac disease if there was a proliferation of ''low-gluten'' or ''very-low-gluten'' claims on food labels. With respect to the other terms suggested by the comments, we continue to lack a scientific foundation for developing definitions for these terms. We also decline to define terms for gluten content below 20 ppm because, as of the date of this final rule, given the current unavailability of appropriate test methods that can reliably and consistently detect gluten at levels below 20 ppm.

Because it is currently not known what amount of gluten would be appropriate for foods bearing a ''low-gluten'' or a ''very-low-gluten'' claim, we have decided only to define ''gluten-free'' as described in § 101.91(a)(3).

(Comment 26) Many comments asked that we require the labels of food bearing a ''gluten-free'' claim to state on the label the total amount of gluten contained in the food (e.g., based upon a gluten analysis of the food). Some comments suggested that we require food labels to declare the amount of gluten present per serving of food in the Nutrition Facts label. Some comments asserted that consumers want to be able to compare ''gluten-free''-labeled foods and choose those with the lowest gluten content to reduce their potential health risks or to estimate their total daily cumulative gluten intake as a way to manage their gluten-free diet. Some comments stated that many consumers do not understand the meaning of a < 20 ppm gluten criterion for a ''gluten-free'' food. Other comments argued that this information is necessary for the label to be truthful and not misleading, or that consumers view the declaration

of gluten within the Nutrition Facts label to be consistent with the manner in which we require nutrients to be declared on food labels.

(Response 26) We decline to require an analysis of the food and resulting declaration on the label of the total amount of gluten contained in a food bearing a ''gluten-free'' claim as discussed in our response to comment 4. Declaring the results of such testing would not be consistent with the purpose of developing a consistent definition of the term ''gluten-free'' to mean that the food contains < 20 ppm gluten and conforms to the final rule's other elements.

To the extent comments seek to add a gluten declaration as part of the Nutrition Facts label, such a request is outside the scope of this rule. However, whether or not a ''gluten-free'' labeling claim is made, we will not object if manufacturers voluntarily provide the amount of gluten present in their food elsewhere on the food label, as long as such a statement is truthful and not misleading. Such voluntary information must comply with all other rules regarding labeling.

(Comment 27) Several comments requested that we permit ''gluten-free'' claims on foods in the form in which they are consumed rather than foods as packaged. The comments noted that certain foods (e.g., dried soup mixes), when prepared according to package directions (e.g., prepared with water), would meet the definition of a ''gluten-free'' food.

In contrast, other comments stated that a ''gluten-free'' claim should apply to the food ''as packaged'' instead of the food ''as prepared.'' The comments said that individuals with celiac disease might consume a food bearing a ''gluten-free'' claim in ways other than those specified in the preparation directions. The comments wanted the assurance that foods, ''as packaged'' and bearing a ''gluten-free'' claim, meet all FDA requirements for a ''gluten-free'' food.

(Response 27) The ''gluten-free'' claim applies to foods ''as packaged'' and not ''as prepared'' according to package directions. This requirement is consistent with our other statutory labeling requirements and implementing regulations. While we understand that setting the criteria for ''gluten free'' claims based on a food ''as packaged'' may not allow certain foods to bear a ''gluten-free'' claim, we agree that some individuals with celiac disease who purchase ''gluten-free'' labeled foods may wish to consume those foods in ways other than those stated in the package directions. For example, instead of reconstituting a dried soup mix according to instructions, a consumer may wish to use that mix in a concentrated form to flavor other foods or to prepare a vegetable dip. If a food sold in a concentrated form were dependent upon food preparation using package directions to ensure the prepared food conforms to this final rule and contains less than 20 ppm gluten, errors in preparation or alternative use of the packaged food product could result in persons with celiac disease consuming foods with gluten content higher than that permitted by our definition of ''gluten-free.''

(Comment 28) Some comments expressed concern that individuals with celiac disease also are exposed to gluten in drugs, dietary supplements, or cosmetics. A few comments wanted us to develop a rule that would be applicable to the labeling of drugs, dietary supplements, and cosmetics in addition to foods.

(Response 28) The final rule does apply to dietary supplements. We are issuing the final rule under FALCPA. FALCPA's requirements apply to all packaged foods sold in the United States that are regulated under the FD&C Act, including both domestically manufactured and imported foods. Section 201(ff) of the FD&C Act states that ''Except for purposes of section 201(g) [definition of drug], a dietary supplement shall be deemed to be a food within the meaning of this Act.'' Accordingly, the final rule applies to dietary supplements. The use of a ''gluten-free'' claim in food labeling including the labeling of dietary supplements is voluntary and does not replace or eliminate any other labeling requirements.

Requirements related to ''gluten-free'' labeling on drugs and cosmetics are outside the scope of this rule. We note that, in the **Federal Register** of December 21, 2011, we published a notice inviting information and comments about ways to help individuals with celiac disease avoid the presence of gluten in drug products (76 FR 79196). The notice also invited information on ingredients in human drug products that are currently derived from wheat, barley, or rye. The comment period closed on March 20, 2012, and FDA's Center for Drug Evaluation and Research is reviewing those comments. As for cosmetics, should we receive data or information indicating that cosmetics present a concern for individuals with celiac disease, we may consider whether further action is warranted.

Additionally, we wish to clarify that this rule pertains to food intended for human use. Although we are aware of gluten claims with respect to food intended for animals, our rulemaking activities have focused on defining the term ''gluten-free'' in a manner that would help humans concerned about managing the gluten in their diet.

(Comment 29) A few comments asked how our definition of ''gluten-free'' would apply to individuals who have an immunoglobulin E-mediated (IgE-mediated) food allergy to wheat, or other non-celiac disease conditions related to consumption of gluten. The comments asked us to consider their needs in defining ''gluten-free.''

(Response 29) We considered a number of factors, including the needs of individuals who have a food allergy to wheat or are sensitive to gluten, in developing this final rule. We are issuing the final rule under, in part, section 206 of FALCPA. In general, FALCPA's requirements apply to all packaged foods sold in the United States that are regulated under the FD&C Act, including both domestically manufactured and imported foods. Additionally, section 203 of FALCPA requires food manufacturers to declare, on the label, if a product contains an ingredient that is one of the eight major food allergens or that contains protein from a major food allergen.

The use of ''gluten-free'' on a food label is voluntary and does not replace or eliminate any other labeling requirements. Therefore, any food containing an ingredient that is a major food allergen under section 201(qq) of the FD&C Act must declare the presence of that ingredient as described in section 403(w)(1) of the FD&C Act.

As we discussed in our response to comment 24, the labeling of wheat as a major food allergen would present the potential for confusion with the ''gluten-free'' claim. Rather than prohibit the use of the ''gluten-free'' claim on products that have used ingredients derived from wheat that have been processed to remove gluten and comply with the definition of ''gluten-free,'' and considering the potential for individuals with an IgE-mediated wheat food allergy to experience adverse health effects in response to servings of food containing residual wheat protein levels below 20 ppm, we have added another requirement for additional qualifying language in § 101.91(b)(3) of the final rule. Section 101.91(b)(3) provides that a food that bears the term ''wheat'' in the ingredient list or in a separate ''Contains wheat'' statement in its labeling as required by section 403(w)(1)(A) of the FD&C Act and also bears the claim ''gluten-free'' will be deemed misbranded unless its labeling

also bears additional language (set forth in the rule) clarifying that the food complies with FDA requirements for a ''gluten-free'' claim.

(Comment 30) A few comments addressed farmers, food companies, and restaurants making ''gluten-free'' claims about their grains/crops, food products, or menu items, respectively. The comments were concerned that these foods could contain gluten due to common cross-contact situations. Other comments expressed the concern that food service personnel may not be thoroughly trained and knowledgeable about the need to segregate gluten-free and non- gluten-free products, and the dietary needs of the celiac population.

(Response 30) Under the final rule, manufacturers making a ''gluten-free'' claim on their labeling must ensure that such foods, in addition to meeting the other criteria, do not contain 20 ppm or more gluten, including the unavoidable presence of gluten due to gluten cross-contact situations or migration from packaging materials.

With respect to restaurants, FDA guidance suggests that any use of an FDA-defined food labeling claim (e.g., ''fat free'' or ''low cholesterol'') on restaurant menus should be consistent with the respective regulatory definitions (Ref. 35).

As for food service personnel, issues regarding the training of food service personnel are beyond the scope of this rulemaking.

(Comment 31) A few comments asked if we intend to issue guidance to industry regarding ''gluten-free'' labeling.

(Response 31) Section 206 of FALCPA directs us to engage in rulemaking to define and permit the use of the term ''gluten-free'' on the labeling of foods. We anticipate that manufacturers wishing to label their products as ''gluten-free'' will be able to understand and comply with the final rule without difficulty. We intend to issue guidance about the ELISA-based methods (Refs. 36 and 37) FDA will use when analysis of a food would be necessary in order to determine regulatory compliance with FDA's definition of ''gluten-free'' for a food bearing such a labeling claim. If, upon further experience with the rule, we find that it would be helpful to issue additional guidance, whether such guidance would be directed at industry or at FDA itself (such as discussion of a new test method), we will consider developing such guidance.

(Comment 32) Some comments urged that we fund research to learn more about potential treatment for celiac disease beyond the avoidance of gluten or about oat sensitivity in some people with celiac disease. Other comments suggested we also support research to determine the impact of low levels of gluten in gluten-sensitive individuals.

(Response 32) Although we agree that these issues are of interest to FDA, the funding of any research activities is beyond the scope of this rulemaking. The final rule is limited to defining the term ''gluten-free'' and to describing how such a claim is permitted in the labeling of foods.

(Comment 33) Several comments expressed concerns about foods containing some level of gluten due to contact with gluten sources (i.e., through cross-contact), and suggested that we require specific manufacturing conditions for foods bearing a ''gluten-free'' claim. In the context of this rule, cross-contact occurs when a food without gluten comes in contact with a gluten-containing food or ingredient, resulting in the presence of gluten in the food not intended to contain gluten. The comments suggested that multi-product facilities do not have sufficient means to minimize the introduction of gluten in products and therefore believed that these foods could not be without gluten. The comments suggested the use of dedicated facilities or dedicated production lines to exclude the unavoidable contact with gluten with foods bearing a ''gluten-free'' claim.

Some comments were particularly concerned that foods inherently free of gluten (e.g., rice or dried fruits) could be processed in facilities or on equipment that also manufacture gluten-containing foods. Because of cross-contact concerns, these comments requested that we require foods bearing a ''gluten-free'' claim to be manufactured on equipment or in facilities that only produce foods that are inherently free of gluten. Some comments asked that we require, when appropriate, that foods labeled ''gluten-free'' also disclose on the label that they were not produced in dedicated facilities (i.e. ''this food manufactured in a facility that also processes foods containing gluten''). However, many other comments said these additional label declarations would be useless and frustrating to individuals with celiac disease who are seeking foods for their gluten-free diets. Still other comments noted that products can be produced in mixed product facilities and still comply with the final rule's definitions and requirements through the use of controls designed to avoid cross-contact of foods with gluten sources during food manufacturing.

(Response 33) We agree with the comments stating that manufacturers that adhere to specific manufacturing practices that can prevent gluten cross-contact situations can produce foods that meet the final rule's definition of ''gluten-free.'' The < 20 ppm level is only one of the criteria used to define ''gluten free.'' We determined that this level is appropriate, enforceable, practical, and protective of the public health. We expect foods bearing the ''gluten-free'' claim to be manufactured using whatever controls are necessary to prevent cross-contact with all gluten sources and to ensure that any amount of gluten that may be present in the food from cross-contact is as low as possible and that the food has less than 20 ppm gluten.

We disagree with comments asking us to require labels to disclose whether foods are not produced in dedicated facilities or on dedicated equipment because such a disclosure would suggest that those foods have necessarily come in contact with gluten and do not comply with the definition of ''gluten-free.'' Nevertheless, manufacturers may disclose voluntarily whether their foods are produced in dedicated facilities or on dedicated equipment, provided that such statements are truthful and non-misleading.

We also disagree with comments requesting that we require foods bearing a ''gluten-free'' claim be manufactured on dedicated equipment or in dedicated facilities because limitations due to cost, equipment utilization needs, and space would make it impractical for many manufacturers to produce gluten-free foods. Some data show that large companies are more likely than their medium-size or small-size counterparts to dedicate facilities to avoid cross-contact (Ref. 38). Facilities should be able to avoid cross-contact during production by using, for example, physical barriers (such as walls, curtains, or distance) or air handling as a means of isolating the production line and by cleaning and sanitation of equipment between production runs. Also, the requirement sought by the comments likely would discourage manufacturers from labeling their products as ''gluten-free'' and result in fewer foods labeled ''gluten-free'' available for persons with celiac disease.

Accordingly, the final rule does not require foods bearing a ''gluten-free'' claim to be manufactured in dedicated facilities or on dedicated equipment, or require any form of disclosure on the label that the foods were not produced in dedicated facilities or on dedicated equipment. We expect these facilities to take proper precautions to reduce the potential for cross-contact of food, food ingredients, food-contact surfaces,

finished foods, or food-packaging materials from gluten sources. The potential for this cross-contact may be reduced by adequate controls and operating practices, effective design, and the separation of operations in which such contact is likely to occur, by one or more of the following means: Location, time, partition, air flow, enclosed systems, cleaning and sanitation, or other effective means.

(Comment 34) Several comments urged us to strictly enforce our rule to ensure that foods bearing a ''gluten-free'' claim comply with the final rule.

(Response 34) We enforce our regulations primarily through inspections of food processing facilities, examination of imports, collection and testing of food products on the market, and imposition of enforcement measures as required to protect consumers. Manufacturers are responsible for ensuring that food bearing a ''gluten-free'' claim is not misbranded for failure to meet the final rule.

(Comment 35) One comment asked how we will enforce the rule against foods already in the marketplace. The comment explained the concern that the consumer will not be able to trust the labeling initially and the rule will be less effective than anticipated.

(Response 35) The final rule becomes effective on September 4, 2013. We recognize that manufacturers of foods currently bearing a ''gluten-free'' claim may need time to review their products to ensure that these foods comply with this final rule, or to remove ''gluten-free'' or similar claims from the label if their foods do not comply. Consequently, we are establishing a compliance date of August 5, 2014.

Although we are issuing the final rule after January 1, 2013, there is sufficient justification for establishing the compliance date of August 5, 2014, to enforce the provisions of this final rule, rather than January 1, 2016, which FDA established as the next uniform compliance date for other food labeling changes for food labeling regulations issued between January 1, 2013, and December 31, 2014 (77 FR 70885; November 28, 2012).

We believe that 12 months from the date of publication is sufficient time for manufacturers to review their products to ensure that these foods comply with this final rule, or to remove ''gluten-free'' or similar claims from the label if their foods do not comply. This period of 12 months is consistent with what FDA has used in the past for compliance with the requirements of voluntary food labeling claims. We believe that waiting until FDA's next uniform compliance date of January 1, 2016, would create an unnecessary delay in the enforcement of this final rule, as foods bearing the voluntary label claim ''gluten-free'' that do not comply with FDA's regulatory definition of ''gluten-free'' could have an adverse public health impact on persons with celiac disease who may be consuming those foods.

Therefore, we are establishing the compliance date to enforce the provisions of this final rule at August 5, 2014. By that time, manufacturers of foods labeled with the ''gluten-free'' claim must comply with the requirements of the final rule.

In the interim, if manufacturers want to use stickers as a short-term measure to amend their labels, we would not object provided that the stickered products are in compliance with all of FDA's labeling requirements. If a manufacturer chooses this option, the sticker should adhere to the package under customary storage conditions throughout the shelf life of the product, and the corrected label must comply with all applicable laws and regulations.

(Comment 36) Some comments expressed concern that distilled vinegar, as a food product or ingredient, could contain gluten. The comments said we should not allow distilled vinegar to be labeled as ''gluten-free.'' Other comments expressed concern about gluten in malt vinegar and malt extract. One comment stated that information contained in the preamble to the proposed rule is contradictory regarding malt vinegar and malt extract. The comment noted that, in some places, the preamble to the proposed rule listed these foods together with wheat starch. The comment said that listing malt vinegar and malt extract with wheat starch could create the misimpression that malt vinegar and malt extract have been processed to remove gluten.

(Response 36) As the comments suggest, there are different types of vinegars. For example, there is distilled vinegar (also known as spirit vinegar or grain vinegar) and other vinegars that are not distilled like cider vinegar (also known as apple vinegar or simply ''vinegar''), wine vinegar (also known as grape vinegar), malt vinegar, sugar vinegar, and glucose vinegar to mention a few. All vinegars undergo a fermentation process during their production, but can be derived from different substances. For example, cider vinegar is made by the alcoholic and subsequent acetous fermentations of the juice of apples; whereas, wine vinegar is made by the alcoholic and subsequent acetous fermentations of the juice of grapes. In addition, as the comments noted, some vinegars may be made from gluten-containing grains, such as malt vinegar, which is the product made by the alcoholic and subsequent acetous fermentations, without distillation, of an infusion of barley malt or cereals whose starch has been converted by malt. For a fuller discussion see Food and Drug Administration, Compliance Policy Guide Sec. 525.825, ''Vinegar, Definitions—Adulteration With Vinegar Eels'' (available at *http://www.fda.gov/ICECI/ComplianceManuals/CompliancePolicyGuidanceManual/ucm074471.htm*).

As we indicated in our response to comment 14, we intend to issue a proposed rule to address how FDA will evaluate compliance with § 101.91(b) when an evaluation of compliance based on an analysis of the food using a scientifically valid method under § 101.91(c) is not available because the food is fermented or hydrolyzed or contains fermented or hydrolyzed ingredients.

We intend to consider the comments received on vinegars, including distilled vinegar, in that proposed rule.

(Comment 37) Many comments urged FDA to coordinate with the U.S. Department of Agriculture (USDA) so that FDA and USDA have the same standard for foods labeled ''gluten-free.'' Other comments indicated that the same definition of ''gluten-free'' should apply to all foods and that ''gluten-free'' labeling of foods should be mandatory and not voluntary to be protective of individuals with celiac disease.

(Response 37) We have been in contact with both the Food Safety and Inspection Service (FSIS, which is an Agency within USDA) and TTB concerning our gluten-free rulemaking and related issues. USDA regulates the labeling of all poultry, most meats, and certain egg products, and TTB regulates the labeling of most alcoholic beverages. We expect to continue working with both FSIS and TTB on matters relating to use of the term ''gluten-free.''

Regarding the comments to make gluten-free labeling ''mandatory,'' section 206 of FALCPA directed us to establish a definition for the term ''gluten-free'' and ''permit'' use of this term in the labeling of food. We consider the use of the word ''permit'' instead of ''require,'' to mean that manufacturers may, but are not required to, label their food products ''gluten-free'' provided that they comply with our rule.

## III. What is the legal authority for this rule?

We received no comments on the legal basis, as set forth in the proposed

rule, to define the term ''gluten free'' for voluntary use in the labeling of foods.

Consistent with section 206 of FALCPA and sections 403(a)(1), 201(n), and 701(a) of the FD&C Act, we are issuing requirements for the use of the term ''gluten free'' for voluntary use in the labeling of foods. A food bearing the claim ''gluten-free'' that does not conform to the requirements in the final rule would result in the food being misbranded within the meaning of sections 403(a)(1) and 201(n) of the FD&C Act.

We include requirements in § 101.91(b)(2) of the final rule for the use of the terms ''no gluten,'' ''free of gluten,'' and ''without gluten'' in the labeling of food in order for such food to not be misbranded under sections 403(a)(1) and 201(n) of the FD&C Act. Specifically, food that bears such a claim in labeling must meet the requirements for the use of the ''gluten-free'' claim because the use of ''no,'' ''free of,'' and ''without'' gluten connote the same meaning to consumers as ''gluten-free'' (Ref. 32). Thus, it would be misleading to consumers to use such terms if the food bearing the claim did not meet the same requirements as a food bearing a ''gluten-free'' claim.

In addition, § 101.91(b)(3) of the final rule requires a food that bears a ''gluten-free'' claim (as well as a ''no gluten,'' ''free of gluten,'' or ''without gluten'' claim) in addition to a statement regarding wheat content on the label required by section 403(w) of the FD&C Act, to also bear additional language to clarify that the wheat has been processed to allow this food to meet FDA requirements for a gluten-free food in order for the food not to be misbranded under sections 403(a)(1) and 201(n) of the FD&C Act. Because consumers would see two seemingly contradictory terms in the labeling based on separate statutory and regulatory requirements for each, this additional language is necessary to prevent consumers from being misled (Ref. 32).

The legal basis for federal preemption is discussed in the Federalism section, section VII.

## IV. Analysis of Impacts—Final Regulatory Impact Analysis

FDA has examined the impacts of this final rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct Agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). We have developed a detailed Regulatory Impact Analysis (RIA) that presents the benefits and costs of this final rule (Ref. 39) which is available at *http://www.regulations.gov* (enter Docket No. FDA–2005–N–0404). The full economic impact analyses of FDA regulations are no longer (as of April 2012) published in the **Federal Register** but are submitted to the docket and are available at *http://www.regulations.gov.* We believe that the final rule is a significant regulatory action as defined by Executive Order 12866.

The Regulatory Flexibility Act requires Agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Additional costs per entity of this final rule are small, but not negligible, and as a result we conclude that the final rule could have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that Agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $141 million, using the most current (2012) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount.

The analyses that we have performed to examine the impacts of this final rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act, and the Unfunded Mandates Reform Act of 1995 are included in the RIA (Ref. 39).

## V. How does the Paperwork Reduction Act of 1995 apply to this final rule?

We conclude that the labeling provisions of this final rule set forth in this document are not subject to review by the Office of Management and Budget because they do not constitute a ''collection of information'' under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Rather, the ''gluten-free'' labeling claims are ''public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public'' (5 CFR 1320.3(c)(2)).

## VI. What is the environmental impact of this rule?

We have determined under 21 CFR 25.30(h) and (k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

## VII. What are the federalism impacts of this rule?

We have analyzed the final rule in accordance with the principles set forth in Executive Order 13132. Section 4(a) of Executive Order 13132 requires Agencies to ''construe . . . a Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.'' Here, we have determined that certain narrow exercises of State authority would conflict with the exercise of Federal authority under the FD&C Act.

In section 206 of FALCPA, Congress directed us to issue a proposed rule to define and permit use of the term ''gluten-free'' on the labeling of foods, in consultation with appropriate experts and stakeholders, to be followed by a final rule for the use of such term in labeling. In the preamble to the proposed rule (72 FR 2795 at 2813 through 2814), we proposed preemption of State requirements and indicated that we had consulted with numerous experts and stakeholders in the proposed rule's development. Different and inconsistent amounts of gluten in foods with ''gluten-free'' labeling result in the inability of those individuals with celiac disease who adhere to a gluten-free diet to avoid exposure to gluten at levels that may result in adverse health effects. There is a need for national uniformity in the meaning of the term ''gluten-free'' so that most individuals with celiac disease can make informed purchasing decisions that will enable them to adhere to a diet they can tolerate without causing adverse health effects and can select from a variety of available gluten-free foods. If States were able to establish different definitions of the term ''gluten-free,'' then individuals with celiac disease would not be able to rely on that term to understand the amount of gluten the food may contain and thereby use the

term to identify appropriate dietary selections. As a result, individuals with celiac disease may unnecessarily limit their food choices, or conversely, select foods with levels of gluten that are not tolerated and that may cause adverse health effects. Food manufacturers, if confronted by a State or various State requirements that adopted a different gluten threshold than what the final rule establishes, might decide to remove the ''gluten-free'' label, and such a result would make it more difficult for individuals with celiac disease to identify foods that they can tolerate and achieve a dietary intake from a variety of foods to meet an individual's nutrient needs. Moreover, a consistent definition of ''gluten-free'' enables the Agency to more efficiently enforce the definition across all foods through the use of a reliable scientifically valid method to detect gluten and ensure labels bearing a ''gluten-free'' claim are truthful and not misleading.

Therefore, the objective of this rule is standardizing use of the term ''gluten-free'' in the labeling of foods so that foods with this claim in labeling, and foods with a claim of ''no,'' ''free of,'' and ''without'' gluten, which connote a similar meaning to that of ''gluten free,'' are used in a consistent way and will therefore prevent consumer confusion and assist individuals with celiac disease to make purchasing decisions.

Section 4(c) of Executive Order 13132 instructs us to restrict any Federal preemption of State law to the ''minimum level necessary to achieve the objectives of the statute pursuant to which the regulations are promulgated.'' The final rule meets the preceding requirement because it preempts State law narrowly, only to the extent required to achieve uniform national labeling with respect to the requirements related to the use of the term ''gluten-free,'' as well as the terms ''no gluten,'' ''free of gluten,'' or ''without gluten.'' As we explain later in this section, we are preempting State or local requirements only to the extent that they are different from the requirements in this section related to the use of the terms ''gluten-free,'' ''no gluten,'' ''free of gluten,'' or ''without gluten.'' In addition, we cannot foresee every potential State requirement and preemption may arise if a State requirement is found to obstruct the federal purpose articulated in this rule. We do not intend the final rule to preempt other State or local labeling requirements with respect to other statements or warnings about gluten. For example, a State would not be preempted from requiring a statement about the health effects of gluten consumption on persons with celiac disease or information about how the food was processed.

Section 4(d) of Executive Order 13132 states that when an Agency foresees the possibility of a conflict between State law and federally protected interests within the Agency's area of regulatory responsibility, the Agency ''shall consult, to the extent practicable, with appropriate State and local officials in an effort to avoid such a conflict.'' Section 4(e) of Executive Order 13132 provides that ''when an agency proposes to act through adjudication or rulemaking to preempt State law, the agency shall provide all affected State and local officials notice and an opportunity for appropriate participation in the proceedings.'' FDA's Division of Federal and State Relations invited the States' participation in this rulemaking by providing notice via fax and email transmission to State health commissioners, State agriculture commissioners, and State food program directors as well as FDA field personnel of the publication of the proposed rule. The notice gave the States further opportunity for input on the rule, advised the States of FDA's possible action, and encouraged State and local governments to provide any comments. We did not receive any comments from State or local authorities.

After we had published the proposed rule in the **Federal Register**, the President issued a memorandum entitled ''Preemption'' (74 FR 24693 (May 22, 2009)). The memorandum, among other things, instructs Agencies to ''not include in regulatory preambles statements that the department or agency intends to preempt State law through the regulation except where preemption provisions are also included in the codified regulation'' and ''not include preemption provisions in codified regulations except where such provisions would be justified under legal principles governing preemption, including the principles outlined in Executive Order 13132'' (id.).

Because of the May 22, 2009, memorandum and because the final rule differs from the proposed rule in several respects, we explain in detail here the principles underlying our conclusion that the final rule may result in preemption of State and local laws under a narrow set of circumstances and describe the final rule's codified provision regarding preemption.

Under the Supremacy Clause of the Constitution (U.S. Constitution; Art. VI, clause 2), State laws that interfere with or are contrary to Federal law are invalid. (See *Gibbons* v. *Ogden,* 22 U.S. (9 Wheat.) 1, 211 (1824).) Federal preemption can be express (stated by Congress in the statute) or implied. Implied preemption can occur in several ways. For example, Federal preemption may be found where Federal law conflicts with State law. Such conflict may be demonstrated either when ''compliance with both federal and state [law] is a physical impossibility'' (*Florida Lime and Avocado Growers, Inc.* v. *Paul,* 373 U.S. 132, 142–143 (1963)), or when State law ''stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress'' (*Crosby* v. *Nat'l Foreign Trade Council,* 530 U.S. 363, 372–74 (2000) (citing *Hines* v. *Davidowitz,* 312 U.S. 52, 67 (1941))). State law is also preempted if it interferes with the methods by which a Federal law is designed to reach its goals. (*See International Paper Co.* v. *Ouellette,* 479 U.S. 481, 494 (1987); *Michigan Canners & Freezers Ass'n* v. *Agricultural Marketing & Bargaining Bd.,* 467 U.S. 461, 477–478 (1984).)

Additionally, '' 'a federal agency acting within the scope of its congressionally delegated authority may preempt state regulation' and hence render unenforceable state or local laws that are otherwise not inconsistent with federal law'' (*City of New York* v. *FCC,* 486 U.S. 57, 63–64 (1988) (quoting *Louisiana Public Service Comm'n* v. *FCC,* 476 U.S. 355, 369 (1986)). ''Federal regulations have no less preemptive effect than federal statutes'' (*Fidelity Federal Savings and Loan Ass'n* v. *de la Cuesta,* 458 U.S. 141, 153 (1982)).

When an Agency's intent to preempt is clearly and unambiguously stated, a court's inquiry will be whether the preemptive action is within the scope of that Agency's delegated authority (*Capital Cities Cable, Inc.* v. *Crisp,* 467 U.S. 691, 700 (1984); *Fidelity Federal Savings,* 458 U.S. at 154). If the Agency's choice to preempt ''represents a reasonable accommodation of conflicting policies that were committed to the agency's care by the statute [the regulation will stand] unless it appears from the statute or its legislative history that the accommodation is not one that Congress would have sanctioned'' (*United States* v. *Shimer,* 367 U.S. 374, 383 (1961)). In *Hillsborough County,* the Supreme Court stated that FDA possessed the authority to promulgate regulations preempting local laws that compromise the supply of plasma and could do so (*Hillsborough County, Fla.* v. *Automated Medical Laboratories, Inc.,* 471 U.S. 707, 721 (1985)). We believe we have similar authority to preempt State and local laws and regulations to the limited extent that they define and permit use of ''gluten-

free,'' ''no gluten,'' ''free of gluten,'' or ''without gluten'' differently from our final rule because different State or local requirements would be contrary to the Congressional directive for us to define and permit use of the term ''gluten-free.''

State or local laws or regulations that define and permit use of ''gluten-free,'' ''no gluten,'' ''free of gluten,'' or ''without gluten'' differently from our final rule could frustrate the ability of most consumers to identify gluten-free foods and avoid adverse health effects and deter manufacturers from applying a ''gluten-free'' label to their foods. As discussed previously, currently, individuals with celiac disease do not know what the term ''gluten-free'' on a product means because there is no consistent or established definition of ''gluten-free'' in the United States. For example, a product currently labeled gluten-free could contain 10 ppm gluten or 100 ppm gluten. Therefore, consumers with celiac disease cannot have confidence to identify and purchase gluten-free products they can tolerate and that can provide a variety of foods in their diets. With a uniform federal definition, consumers throughout the United States can understand what the term ''gluten-free'' means on a packaged food. A uniform definition of gluten-free will also allow the Agency to more efficiently enforce the definition on product labels and manufacturers will be able to comply with a single set of requirements which may lead to greater use of this voluntary labeling. Consequently, we have added a new § 101.91(d) entitled ''Preemption'' to the final rule. Section 101.91(d) declares that a State or political subdivision of a State may not establish or continue into effect any law, rule, regulation, or other requirement that is different from the requirements in § 101.91 for the definition and use of the term ''gluten-free,'' as well as the terms ''no gluten,'' ''free of gluten,'' or ''without gluten.'' Preemption may also arise with regard to other labeling language regarding gluten if a state requirement is found to obstruct the federal purpose articulated in this rule.

## VIII. References

The following references have been placed on display in the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday, and are available electronically at *http://www.regulations.gov.* (We have verified all the Web site addresses in the References section, but we are not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)


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## List of Subjects in 21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Food and Drug Administration amends 21 CFR part 101 as follows:

## PART 101—FOOD LABELING

■ 1. The authority citation for 21 CFR part 101 continues to read as follows:

**Authority:** 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 331, 342, 343, 348, 371; 42 U.S.C. 243, 264, 271.

■ 2. Section 101.91 is added to subpart F to read as follows:

### § 101.91 Gluten-free labeling of food.

(a) *Definitions.* (1) The term ''gluten-containing grain'' means any one of the following grains or their crossbred hybrids (e.g., triticale, which is a cross between wheat and rye):

(i) Wheat, including any species belonging to the genus *Triticum;*

(ii) Rye, including any species belonging to the genus *Secale;* or

(iii) Barley, including any species belonging to the genus *Hordeum.*

(2) The term ''gluten'' means the proteins that naturally occur in a gluten-containing grain and that may cause adverse health effects in persons with celiac disease (e.g., prolamins and glutelins).

(3) The labeling claim ''gluten-free'' means:

(i) That the food bearing the claim in its labeling:

(A) Does not contain any one of the following:

(*1*) An ingredient that is a gluten-containing grain (e.g., spelt wheat);

(*2*) An ingredient that is derived from a gluten-containing grain and that has not been processed to remove gluten (e.g., wheat flour); or

(*3*) An ingredient that is derived from a gluten-containing grain and that has been processed to remove gluten (e.g., wheat starch), if the use of that ingredient results in the presence of 20 parts per million (ppm) or more gluten in the food (i.e., 20 milligrams (mg) or more gluten per kilogram (kg) of food); or

(B) Inherently does not contain gluten; and

(ii) Any unavoidable presence of gluten in the food bearing the claim in its labeling is below 20 ppm gluten (i.e., below 20 mg gluten per kg of food).

(b) *Requirements.* (1) A food that bears the claim ''gluten-free'' in its labeling and fails to meet the requirements of paragraph (a)(3) of this section will be deemed misbranded.

(2) A food that bears the claim ''no gluten,'' ''free of gluten,'' or ''without gluten'' in its labeling and fails to meet the requirements of paragraph (a)(3) of this section will be deemed misbranded.

(3) A food that bears the term ''wheat'' in the ingredient list or in a separate ''Contains wheat'' statement in its labeling, as required by 21 U.S.C. 343(w)(1)(A), and also bears the claim ''gluten-free'' or a claim identified in paragraph (b)(2) of this section will be deemed misbranded unless the word ''wheat'' in the ingredient list or in the ''Contains wheat'' statement is followed immediately by an asterisk (or other symbol) that refers to another asterisk (or other symbol) in close proximity to the ingredient statement that immediately precedes the following: ''The wheat has been processed to allow this food to meet the Food and Drug Administration (FDA) requirements for gluten-free foods.''

(c) *Compliance.* When compliance with paragraph (b) of this section is based on an analysis of the food, FDA will use a scientifically valid method that can reliably detect the presence of 20 ppm gluten in a variety of food

matrices, including both raw and cooked or baked products.

(d) *Preemption.* A State or political subdivision of a State may not establish or continue into effect any law, rule, regulation, or other requirement that is different from the requirements in this section for the definition and use of the claim ''gluten-free,'' as well as the claims ''no gluten,'' ''free of gluten,'' or ''without gluten.''

Dated: July 30, 2013.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

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## DEPARTMENT OF STATE

### 22 CFR Part 126

**RIN 1400–AD41**

**[Public Notice 8409]**

## Amendment to the International Traffic in Arms Regulations: Libya and UNSCR 2095

**AGENCY:** Department of State.

**ACTION:** Final rule.

**SUMMARY:** The Department of State is amending the International Traffic in Arms Regulations (ITAR) to update the defense trade policy regarding Libya to reflect resolution 2095 adopted by the United Nations Security Council.

**DATES:** This rule is effective August 5, 2013.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sarah J. Heidema, Acting Director, Office of Defense Trade Controls Policy, U.S. Department of State, telephone (202) 663–2809, or email *DDTCResponseTeam@state.gov.* ATTN: Regulatory Change, Libya.

**SUPPLEMENTARY INFORMATION:** On March 14, 2013, the United Nations Security Council adopted resolution 2095 (''UNSCR 2095''), which further modified the arms embargo against Libya put in place by the adoption in February and March of 2011 of resolutions 1970 and 1973, respectively, and modified by resolutions 2009 and 2016, adopted in September and October of 2011, respectively (for previous ITAR amendments regarding Libya defense trade policy, *see* ''Amendment to the International Traffic in Arms Regulations: Libya,'' RIN 1400–AC83, 76 FR 30001, and ''Amendment to the International Traffic in Arms Regulations: Libya and UNSCR 2009,'' RIN 1400–AC97, 76 FR 68313).

UNSCR 2095 removed the requirement for member states to notify the Committee of the Security Council concerning Libya (''the Committee'') of exports of non-lethal military equipment, and the provision of any technical assistance or training, intended solely for security or disarmament assistance to the Libyan government. It also removed the requirement to seek the approval of the Committee for exports of non-lethal military equipment, and related technical assistance or training, for humanitarian and protective use. The Department of State is amending ITAR § 126.1(k) accordingly.

### Regulatory Analysis and Notices

*Administrative Procedure Act*

The Department of State is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the United States Government and that rules implementing this function are exempt from sections 553 (rulemaking) and 554 (adjudications) of the Administrative Procedure Act. Since the Department is of the opinion that this rule is exempt from 5 U.S.C. 553, it is the view of the Department that the provisions of section 553(d) do not apply to this rulemaking. Therefore, this rule is effective upon publication. The Department also finds that, given the national security issues surrounding U.S. policy towards Libya, notice and public procedure on this rule would be impracticable or unnecessary; for this reason also, this rule is effective upon publication.

*Regulatory Flexibility Act*

Since the Department is of the opinion that this rule is exempt from the provisions of 5 U.S.C. 553, there is no requirement for an analysis under the Regulatory Flexibility Act.

*Unfunded Mandates Reform Act of 1995*

This rulemaking does not involve a mandate that will result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

*Small Business Regulatory Enforcement Fairness Act of 1996*

This rulemaking has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996.

*Executive Orders 12372 and 13132*

This rulemaking 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. Therefore, in accordance with Executive Order 13132, it is determined that this rulemaking does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this rulemaking.

*Executive Orders 12866 and 13563*

Executive Orders 12866 and 13563 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributed impacts, and equity). These executive orders stress the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''significant regulatory action,'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, this rule has been reviewed by the Office of Management and Budget (OMB).

*Executive Order 12988*

The Department of State has reviewed this rulemaking in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

*Executive Order 13175*

The Department of State has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this rulemaking.

*Paperwork Reduction Act*

This rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

**List of Subjects in 22 CFR Part 126**

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, part 126 is amended as follows:

## PART 126—GENERAL POLICIES AND PROVISIONS

■

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

**Authority:** Secs. 2, 38, 40, 42, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); 22 U.S.C. 2651a; 22 U.S.C. 287c; E.O. 12918, 59 FR 28205; 3 CFR, 1994 Comp., p. 899; Sec. 1225, Pub. L. 108–375; Sec. 7089, Pub. L. 111–117; Pub. L. 111–266; Sections 7045 and 7046, Pub. L. 112–74; E.O. 13637, 78 FR 16129.

■ 2. Section 126.1 is amended by revising paragraph (k) to read as follows:

**§ 126.1 Prohibited exports, imports, and sales to or from certain countries.**

* * * * *

(k) *Libya.* It is the policy of the United States to deny licenses or other approvals for exports or imports of defense articles and defense services destined for or originating in Libya, except that a license or other approval may be issued, on a case-by-case basis, for:

(1) Arms and related materiel intended solely for security or disarmament assistance to the Libyan government, notified to the Committee of the Security Council concerning Libya in advance and in the absence of a negative decision by the Committee within five working days of such a notification;

(2) Non-lethal military equipment when intended solely for security or disarmament assistance to the Libyan government;

(3) The provision of any technical assistance or training when intended solely for security or disarmament assistance to the Libyan government;

(4) Small arms, light weapons, and related materiel temporarily exported to Libya for the sole use of United Nations personnel, representatives of the media, and humanitarian and development workers and associated personnel, notified to the Committee of the Security Council concerning Libya in advance and in the absence of a negative decision by the Committee within five working days of such a notification;

(5) Non-lethal military equipment intended solely for humanitarian or protective use, and related technical assistance or training; or

(6) Other sales or supply of arms and related materiel, or provision of assistance or personnel, as approved in advance by the Committee of the Security Council concerning Libya.

* * * * *

**Rose E. Gottemoeller,**

*Acting Under Secretary, Arms Control and International Security, Department of State.*

[FR Doc. 2013–18940 Filed 8–2–13; 8:45 am]

**BILLING CODE 4710–25–P**

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## DEPARTMENT OF LABOR

## Occupational Safety and Health Administration

## 29 CFR Part 1960

**[Docket No. OSHA–2013–0018]**

## Basic Program Elements for Federal Employee Occupational Safety and Health Programs and Related Matters; Subpart I for Recordkeeping and Reporting Requirements

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Final rule.

**SUMMARY:** OSHA is issuing a final rule amending the Basic Program Elements to require Federal agencies to submit their occupational injury and illness recordkeeping information to the Bureau of Labor Statistics (BLS) and OSHA on an annual basis. The information, which is already required to be created and maintained by Federal agencies, will be used by BLS to aggregate injury and illness information throughout the Federal government. OSHA will use the information to identify Federal establishments with high incidence rates for targeted inspection, and assist in determining the most effective safety and health training for Federal employees. The final rule also interprets several existing basic program elements in our regulations to clarify requirements applicable to Federal agencies, amends the date when Federal agencies must submit to the Secretary of Labor their annual report on occupational safety and health programs, amends the date when the Secretary of Labor must submit to the President the annual report on Federal agency safety and health, and clarifies that Federal agencies must include uncompensated volunteers when reporting and recording occupational injuries and illnesses.

**DATES:** This final rule becomes effective January 1, 2014.

**FOR FURTHER INFORMATION CONTACT:** Francis Yebesi, Director, Office of Federal Agency Programs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3622, Washington, DC 20210, telephone 202–693–2122, email: *yebesi.francis@dol.gov.*

**SUPPLEMENTARY INFORMATION:**

### Executive Summary for This Final Rule

*A. Purpose*

Today's final rule establishes requirements directing Federal agencies to submit their occupational injury and illness recordkeeping information to the Secretary of Labor which will allow (1) BLS to analyze injury and illness data at Federal establishments, and (2) OSHA to better track injury trends at Federal agencies, and to better target inspections at the most hazardous Federal establishments.

*B. Summary of Major Provisions*

- *Revisions to update existing regulatory language: Since the basic program elements were originally published in 1980, changes have occurred that make the existing language out of date.*
- *The Unites States Postal Service:* The Occupational Safety and Health Act of 1970 (OSH Act) was amended to make it applicable to the U.S. Postal Service (USPS) in the same manner as any other private sector employer. Therefore, language in the basic program elements has been modified to indicate that the USPS is not included in the definition of ''agency.''
- *Financial management:* The Office of Management and Budget (OMB) circulars referenced in the original regulations are no longer in use. Therefore the language has been revised to reference only relevant OMB regulations and documents.
- *Abatement of unsafe or unhealthful working conditions:* Abatement requirements have been changed to follow private sector procedures.
- *Records retention:* A section of the basic program elements addressing retention and access of employee records was inadvertently deleted in a prior revision and is now being reinserted in this rulemaking.
- *Changes are being made to require Federal agencies to annually submit their OSHA required injury and illness data.*
- *Modifying dates to reflect the collection of calendar year data, rather than fiscal year data:* We have modified the due date when Federal agencies must submit their annual report on safety and health to OSHA, and the report from OSHA to the President, to

allow for the use of OSHA required injury and illness data.

• *Submission of the OSHA required injury and illness data:* We are stipulating that the Secretary of Labor will be collecting the OSHA required injury/illness data annually. Clarification is also provided on how to identify the injuries/illnesses of volunteers, the calculation of the total number of hours worked by uncompensated volunteers, and that OMB job series numbers should be used to identify job titles.

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## I. Background: Federal Agency Safety and Health Programs.

Section 19 of the Occupational Safety and Health Act (the ''OSH Act'') (29 U.S.C. 668) includes provisions to ensure safe and healthful working conditions for Federal sector employees. Under that section, each Federal agency is responsible for establishing and maintaining an effective and comprehensive occupational safety and health program consistent with the standards promulgated by OSHA under Section 6 of the OSH Act. Executive Order 12196, *Occupational Safety and Health Programs for Federal Employees,* issued February 26, 1980, prescribes additional responsibilities for the heads of Federal agencies, the Secretary of Labor, and the General Services Administration. Among other things, the Secretary of Labor, through OSHA, is required to issue basic program elements with which the heads of agencies must operate their safety and health programs. These basic program elements are set forth at 29 CFR Part 1960. Section 19 of the OSH Act, the Executive Order, and the basic program elements under 29 CFR Part 1960 apply to all agencies of the Executive Branch except military personnel and uniquely military equipment, systems, and operations.

## II. Injury and Illness Recordkeeping in the Federal Sector

Pursuant to Section 19(a) of the OSH Act, each head of a Federal agency is responsible for keeping adequate records of all occupational injuries and illnesses. Section 1–401(d) of Executive Order 12196 provides the Secretary with authority to prescribe recordkeeping and reporting requirements for Federal agencies. On October 21, 1980, OSHA issued a final rule addressing Federal agency safety and health programs which included occupational injury and illness recordkeeping requirements at 29 CFR Part 1960, Subpart I, *Recordkeeping and Reporting Requirements,* (45 FR 69796).

On January 19, 2001, OSHA issued a revised system of injury and illness recordkeeping requirements for private sector employers at 29 CFR Part 1904, (66 FR 5916). The revised recordkeeping rules were designed, among other things, to provide better information about the incidence of occupational injuries and illnesses; simplify the recordkeeping system for employers; promote improved employee awareness and involvement in the recording and reporting of injuries and illness; and permit the increased use of computers and telecommunications in carrying out OSHA-required recordkeeping.

By 2004, it was clear to OSHA that significant inconsistencies existed between the private sector and the Federal Government's recording and tracking of occupational injuries and illnesses. In order to make the private sector and Federal sector systems consistent, OSHA, on November 26, 2004, issued a final rule to amend the occupational injury and illness recordkeeping requirements applicable to Federal agencies, (69 FR 68793). OSHA's final rule adopted applicable provisions of 29 CFR Part 1904, which made the recording and reporting requirements for the Federal sector essentially identical to those for the private sector.

## III. OSHA's Injury and Illness Recordkeeping System

OSHA's regulation at 29 CFR 1904, *Recording and Reporting Occupational Injuries and Illnesses,* was one of the first regulations promulgated by OSHA. First issued in 1971, this regulation requires employers to record information on the occurrence of injuries and illnesses in their workplaces if the injuries and illnesses meet one or more of certain recording criteria. In accordance with the OSH Act, OSHA requires employers to record work-related injuries and illnesses that involve death, loss of consciousness, days away from work, restricted work activity or job transfer, medical treatment beyond first aid, or diagnosis of a significant injury or illness by a physician or other licensed health care professional.

The OSHA recordkeeping system consists of three forms. First, employers must maintain a log (OSHA Form 300, commonly referred to as the ''OSHA log,'' or an equivalent form) that lists each injury and illness that occurred in each establishment during the year. The log is available to employees, former employees, and their representatives. For each case on the log, the employer also prepares a supplementary record (OSHA Form 301, or an equivalent), that provides additional details about the injury or illness. A summary of the log (OSHA Form 300A, or an equivalent) is prepared by the employer and posted in the workplace from February 1 to April 30 of the year following the year to which the records pertain. As noted in the November 2004 recordkeeping final rule, Federal agencies may choose to use the Office of Workers' Compensation Program (OWCP) Forms CA–1, CA–2 and CA–6 [1] for the purpose of complying with OSHA's recordkeeping requirements (excluding contractors), as long as Federal agencies include the additional OSHA-required information for the OSHA 301 form. If agencies use these forms for OSHA recordkeeping requirements, they must ensure all OSHA required fields on these forms are complete, whether or not they are required by OWCP.

Occupational injury and illness records, and the statistics based on them, have several desired functions or uses. One use is to provide information to employers and employees about the kinds of injuries and illnesses occurring in the workplace, and the hazards that cause or contribute to them. Injury and illness statistics play an important role in shaping an employer's injury and illness prevention program, and investigation into patterns of injuries can provide information useful in abating hazards and preventing additional injuries from occurring.

The records are also an important source of information for OSHA. During the initial stages of an inspection, an OSHA representative reviews the recordkeeping data for the establishment as an aid to focusing the inspection effort on safety and health hazards. OSHA also uses establishment-

[1] CA–1, Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation; CA–2, Notice of Occupational Disease and Claim for Compensation; CA–6, Official Superior's Report of Employee's Death.

specific injury and illness information to help target its intervention efforts on the most dangerous worksites. Injury and illness statistics help OSHA identify the scope of occupational safety and health problems and decide whether regulatory intervention, compliance assistance, or other measures are warranted.

Finally, the records required by the OSHA recordkeeping regulation are the source of information for the BLS-generated national statistics on workplace injuries and illnesses, including information on the source, nature, and type of these injuries and illnesses. BLS makes the aggregate information available both for research purposes and for public information. BLS has published occupational safety and health statistics since 1971, and this information charts the magnitude and nature of injury and illness problems across the country.

## IV. OSHA Access to and Use of Recordkeeping Information

*1. Private Sector*

In the private sector, OSHA has long had in place rules pertaining to Agency access to information concerning worker safety and health. Section 8 of the OSH Act provides OSHA with the authority to issue regulations and standards requiring employers to make, keep and preserve, and make available to OSHA, records relating to the OSH Act. OSHA's regulation at 29 CFR 1910.1020, *Access to employee exposure and medical records,* provides access to exposure and medical records to employees, their designated representatives, and OSHA. Several of OSHA's substance-specific health standards, such as those for occupational exposure to benzene and lead, include requirements for employee and OSHA access to information required to be maintained by those standards.

With respect to OSHA injury and illness recordkeeping, Section 1904.40 requires employers to provide a complete copy of records kept under Part 1904 to an authorized government representative when the representative asks for such records during a workplace safety and health inspection. Section 1904.40(b)(1) states that authorized government representatives who have a right to obtain Part 1904 records are a representative of the Secretary of Labor conducting an inspection or investigation under the OSH Act, a representative of the Secretary of Health and Human Services (including the National Institute for Occupational Safety and Health (NIOSH) conducting an investigation under Section 20(b) of the OSH Act, or a representative of a State agency responsible for administering a State plan under Section 18 of the OSH Act.

Section 8(c) of the OSH Act also gives the Secretary the authority to prescribe regulations requiring employers to make periodic reports on work-related deaths, injuries and illnesses. For purposes of OSHA injury and illness recordkeeping, periodic reporting from a subset of employers is accomplished through the OSHA Data Initiative (ODI), and the Annual Survey of Occupational Injuries and Illnesses conducted by BLS. Although OSHA and BLS collect injury and illness information, collection of the information is conducted through different means and used for different purposes.

Under Section 1904.41, each year OSHA sends injury and illness survey forms to employers in certain high-hazard industries. In any year, some employers will receive a survey form, and others will not. Employers are not required to send injury and illness recordkeeping information to OSHA unless they receive a survey form.

Employers that receive a survey form submit information on the number of workers employed, the number of hours worked by employees, and requested information from records created and maintained under Part 1904. The information produced from the survey includes incidence rates, as well as the number of occupational injuries and illnesses. Incidence rates relate the number of injuries and illnesses to a common base of exposure. The rate shows the number of injuries and illnesses per 100 workers. This common base allows for accurate cross-industry comparisons, trend analysis over time and comparisons among firms regardless of size. The establishment-specific data collected by OSHA are used to administer OSHA's various programs and to measure the performance of those programs at individual workplaces.

Section 1904.42 establishes requirements for employers, when asked, to complete and submit an annual survey from BLS. BLS collects data from a statistical sample of employers in all industries and across all size classes, using the data to compile occupational injury and illness statistics for the Nation. BLS gives each respondent a pledge of confidentiality (as it does on all BLS surveys), and the establishment-specific injury and illness data are not shared with the public, OSHA or other government agencies.

*2. Federal Sector*

Section 19 of the OSH Act provides the Secretary of Labor with access to occupational injury and illness records and reports kept and filed by Federal agencies ''unless those records and reports are specifically required by Executive Order to be kept secret in the interest of the national defense or foreign policy, in which case the Secretary of Labor shall have access to such information as will not jeopardize national defense or foreign policy.'' Section I–201(j) of Executive Order 12196 requires the head of each agency to operate an occupational safety and health management information system, which includes the maintenance of records required by the Secretary of Labor. Section I–201(l) also requires the head of each agency to submit to the Secretary of Labor an annual report on the agency occupational safety and health program that includes information the Secretary prescribes. Section 401(d) of the Executive Order states that the Secretary of Labor shall prescribe recordkeeping and reporting requirements.

## V. Federal Agency Injury and Illness Data Submission

Today's final rule establishes requirements directing Federal agencies to submit their occupational injury and illness recordkeeping information to the Secretary. The final rule does not require Federal agencies to create or maintain any new records. Instead, the final rule amends the basic program elements at 29 CFR part 1960 by adding § 1960.72, and requires Federal agencies to submit information included on the three OSHA recordkeeping forms to BLS. BLS will then electronically transmit the data from these forms to OSHA.

Under the final rule, by May 1 of each year, Federal agencies must submit their injury and illness recordkeeping data from the previous calendar year directly to BLS. The May 1 deadline for submission of the previous calendar year's information is based on the posting requirements in § 1904.32. That Section requires employers to post their Annual Summary from the previous calendar year from February 1 through April 30. During the posting period, employees have the opportunity to review the information, and this review may result in new or revised entries about injuries and illnesses at the establishment. Therefore, the May 1 submission deadline should allow for the submission of more accurate and complete recordkeeping information.

BLS is leading the collection effort established by today's final rule because it already has a system in place to collect injury and illness data from the private sector. However, the final rule includes two important differences from the private sector data collection system. First, unlike the private sector collection effort, which is a statistical sample, today's final rule requires the submission of all Federal agency injury and illness data from each Federal establishment. Second, unlike the private sector BLS survey, which is conducted solely for statistical purposes and not shared with OSHA, the BLS collection of federal agency data from the OSHA forms will be electronically transmitted to OSHA.

Individually identifiable information will not be made public. Establishment data will not be published if such information will result in a breach of employee privacy. DOL will carefully review all information before it is released, to ensure that privacy is not violated.

*1. How the Data Will Be Used by BLS*

The submitted information will be used by BLS when developing and analyzing Federal Government injury and illness statistics. In the private sector and State and local government, BLS collects injury and illness data from employers through the Annual Survey of Occupational Injuries and Illnesses. An employer selected by BLS to participate in the Annual Survey must provide information about employee injuries and illnesses recorded on the employer's OSHA forms. BLS collects the information from a statistical sample in all industries and across all size classes, and uses the data to estimate the number of work-related injuries and illnesses across the Nation, as well as a measure of the frequency (rate) at which they occur. The BLS survey, which is conducted solely for statistical purposes, is not directly related to OSHA's enforcement of workplace safety and health requirements.

BLS will use the data required to be submitted by today's final rule to calculate injury and illness incidence rates for the Federal sector. BLS develops incidence rates by industry, establishment size, and many other case types, and Federal agencies will be able to compare their incidence rates with national averages for similar types of organizations. The information will be aggregated from other Federal agencies and similar establishments in the private sector and State and local government to identify injury and illness patterns among industries and occupations.

*2. How the Data Will Be Used by OSHA*

OSHA will use the submitted information for a variety of purposes, including targeting of Federal workplaces for OSHA inspection; deployment of resources for safety and health training; periodic assessment of the basic program elements; development of information for promulgating, revising or evaluating OSHA standards and regulations; evaluating and analyzing Presidential initiatives addressing injury and illness rate reduction in the Federal Government; and OSHA evaluations. By using the establishment-specific information, OSHA will be able to more effectively allocate its resources to focus on the most hazardous Federal establishments.

In the past, OSHA used statistical data provided by the OWCP to target safety and health inspections of Federal agency workplaces. However, the OWCP data is based on whether a case is compensable, and not on whether a case is recordable under OSHA's injury and illness recordkeeping system. Because OSHA has relied on OWCP statistical data, the Agency has not had an effective means of identifying and targeting the most hazardous Federal establishments for comprehensive safety and health inspection. On the other hand, occupational injury and illness records provide safety and health information about specific Federal establishments, including information about the location, equipment, materials or chemicals used at the time of an injury or illness.

Moreover, OSHA uses injury and illness recordkeeping information collected from the OSHA Data Initiative (ODI) when it targets private sector employers for safety and health inspection. By analyzing the recordkeeping data required to be submitted by today's final rule, OSHA will be relying on the same type of information for targeting Federal establishments as it currently uses to make such determinations in the private sector.

OSHA also intends to incorporate the collected information into the Secretary of Labor's Annual Report to the President on Federal Agency Safety and Health. Section 19(a)(5) of the OSH Act and Executive Order 12196 require Federal agencies to make an annual report to the Secretary on occupational accidents and injuries, as well as the Federal agency's program for providing safe and healthful places and conditions of employment. The OSH Act and Executive Order also direct the Secretary to submit an annual summary report to the President on the status of Federal agency occupational safety and health. Historically, when preparing the report for the President, OSHA has included information furnished by OWCP when compiling statistical data concerning Federal agency injury and illness case rates and lost time case rates. In the future, OSHA intends to use the occupational safety and health related data collected from the submitted data when preparing the annual report for the President.

*3. Options for Submitting the Data*

Under the final rule, Federal agencies will submit their injury and illness data using BLS internet data collection facilities. At present, Federal agencies have three options for submitting their OSHA injury and illness recordkeeping information. First, Federal agencies may submit their annual data securely through an internet system with individual password protection, as about 80 percent of the private- and governmental-establishments do today. Second, Federal agencies with existing electronic recordkeeping data collection systems can be provided with a file structure and file transfer protocol to allow them to transmit all of their injury and illness information to BLS. Finally, Federal agencies without existing electronic recordkeeping systems may choose to receive a database structure from the Department of Labor they can use to collect and track their OSHA recordable injuries and illnesses. The current available database structure, known as ECOMP, will require Federal agencies to electronically file their OWCP CA–1 and CA–2 forms. In addition, it will allow Federal agencies to generate their own injury and illness recordkeeping forms. Those agencies may then use the BLS internet system or, like the second option, use a file structure and file transfer protocol to electronically transmit the data to BLS through ECOMP.

BLS collects injury and illness data from private sector employers and state and local governments under a pledge of confidentiality in accordance with Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA), Title 5 of Public Law 107–347, and other applicable Federal law. This pledge of confidentiality does not extend to Federal agencies. BLS will electronically transfer Federal agency data from the OSHA forms to OSHA annually, after the end of each collection cycle.

OSHA intends to develop specific instructions and guidance for Federal agencies, which will be issued annually through written memoranda, on how to

submit the data to BLS using the available options. OSHA also intends to develop and maintain a page on its Web site listing the options for submitting the information, as well as specific instructions and guidance included in the annual memorandum to Federal agencies. The annual memorandum and Web page will also serve to notify Federal agencies about the development of new technologies or options for submitting injury and illness information.

## VI. Identification and Listing of Federal Establishments

Section 1904.46 of OSHA's private sector recordkeeping regulation includes a definition of the term ''establishment.'' When the injury and illness recordkeeping requirements for Federal agencies were revised in November 2004, OSHA did not incorporate the Part 1904 definition of establishment. Instead, OSHA retained the definition of establishment for Federal agencies in 29 CFR 1960.2(h).

The term ''establishment'' is defined at 29 CFR 1960.2(h) as ''a single physical location where business is conducted or where services or operations are performed. Where distinctly separate activities are performed at a single physical location, each activity is to be treated as a separate establishment. Typically, the term establishment refers to a field activity, regional office, area office, installation, or facility.''

Federal agencies are responsible for keeping a separate OSHA 300 Log (or equivalent), and preparing a single OSHA 300–A Annual Summary for each establishment. (They are also required to keep case details on the OSHA 301 form.) Establishment-specific records are a key component of the recordkeeping system because each separate record represents the injury and illness experience of a given location, and therefore reflects the particular circumstances and hazards that led to the injuries and illnesses at that workplace.

Since 2004, some uncertainty has developed concerning the definition of establishment and its application to Federal agencies. Federal agencies face unique challenges in determining whether specific workplaces meet the definition of ''establishment'' in § 1960.2(h). For example, in some cases, a single Federal building may house several different Federal agencies, which in turn may have several sub-agencies, divisions or offices. Federal agencies may also establish temporary or short-term offices or workplaces during a given year. In addition, Federal employees may work at multiple locations, at a regional or satellite office, or from home.

For Federal agency OSHA recordkeeping, major organizational units with distinct lines of authority are considered separate establishments. Each Federal department has an organizational structure consisting of agencies, bureaus, or other components that come under the line of authority of an Assistant Secretary, Under Secretary, Assistant Administrator, or similar level. These agencies, bureaus or components are considered major organizational units of a department.

The definition of establishment for Federal agencies at 29 CFR 1960.2(h) includes the phrase: ''where distinctly separate activities are performed at a single physical location.'' This definition means that each major organizational unit, such as agencies, bureaus or similar components within a Department, is considered an establishment, even if they occupy the same building. For example, the OSHA, the Employment and Training Administration and the Employee Benefits Security Administration are all agencies within the Department of Labor (DOL), and are housed in DOL's Frances Perkins Building. Even though they occupy the same building, these agencies are considered separate establishments for OSHA recordkeeping. This analysis would apply to major organizational units within national, regional or area buildings.

On the other hand, lower organizational units or offices within an agency or bureau located at the same physical location are not separate establishments. For example, the Directorate of Enforcement Programs and Office of Occupational Medicine are both OSHA units located in the DOL Frances Perkins Building, but they are not major organizational units, and therefore are not considered separate establishments.

Other individual Federal agency workplaces with separate physical locations would also be considered separate establishments. For example, OSHA has Regional and Area offices in cities throughout the United States. Even though the Regional and Area offices are part of a major organizational unit (i.e., OSHA), since these offices are at separate locations, they would each be considered a separate establishment. Likewise, Federal agencies with several physical locations within the same city or geographic region are separate establishments. For example, the Civil Rights Division within the U.S. Department of Justice (DOJ) has offices in various buildings located several miles apart in Washington, DC. Even though the offices are all within the same agency (i.e., the Civil Rights Division of DOJ), because they are at separate physical locations, they would be considered separate establishments for OSHA recordkeeping purposes.

Section 1904.30 addresses the procedures to be followed when recording injuries and illnesses occurring in separate establishments operated by the same employer. Section 1904.30(a) states that employers are required to keep separate OSHA 300 Logs for each establishment expected to be in operation for one year or longer. Section 1904.30(b)(1) provides that for short-term establishments, *i.e.,* those that will exist for less than one year, employers are required to keep injury and illness records, but are not required to keep separate OSHA 300 Logs. Instead, employers may keep one OSHA 300 Log covering all short-term establishments, or they may include the short-term establishment records in logs that cover individual company divisions or geographic regions. Federal agencies have the same option when recording injuries and illnesses at short-term establishments.

In some cases, Federal employees work at several different locations, or do not work at any establishment. Section 1904.30(b)(3) provides that each employee must be linked, for recordkeeping purposes, to one of the employer's establishments. This means that all of the employee's injuries or illnesses must be recorded on either his or her home establishment's OSHA 300 Log, or on a general OSHA 300 Log for short-term establishments. The provision ensures that all employees are included in a Federal agency's records.

### *1. Federal Employees Visiting or Working at Other Federal Establishments*

Under Section 1904.30(b)(4), if an employee is injured or made ill while visiting or working at another of the employer's establishments, then the injury or illness must be recorded on the 300 Log of the establishment where the injury or illness occurred. For the vast majority of cases, the place where the injury or illness occurred is the most useful recording location. (See 66 FR6037). The events or exposures that caused the case are most likely to be present at that location, so the data are most useful for analysis of that location's records. If cases were always recorded at the employee's home base, the injury or illness information would be disconnected from the place where the event or exposure took place, and

where analysis of the data may help reveal a workplace hazard. Of course, if the injury or illness occurs at another employer's workplace, or while the employee is in transit, the case would be recorded on the OSHA 300 Log of the employee's home establishment.

For Federal agency recordkeeping purposes, each Department or Bureau is considered the Federal employee's employer, and injuries or illnesses occurring at other Federal Department facilities would be recorded on the employee's home establishment's OSHA 300 Log. For example, if an employee of the Department of Labor is either visiting, or working under the supervision of his or her own agency at a Department of Justice facility, and is injured or made ill, the case would be recorded on the employee's home DOL establishment OSHA 300 Log. Of course, as discussed above, if the DOL employee in this example is being supervised by DOJ employees on a day-to-day basis, and is injured or made ill, the case would be recorded on the DOJ's establishment log.

Injuries and illnesses occurring at facilities operated by the same Department would be recorded on the OSHA Log where the injury or illness took place. For example, if an employee from DOL/OSHA were either visiting or working at a DOL/Mine Safety and Health Administration (MSHA) facility, and was injured or made ill, the case would be recorded on the DOL/MSHA Log. Again, in this example, since the Department of Labor is considered the OSHA employee's employer, the case would be recorded on the log where the injury or illness took place.

*2. Federal Employees That Work From Home*

When a Federal employee telecommutes, the employee's home is not a separate establishment for recordkeeping purposes, and a separate OSHA 300 Log is not required. For these workers, the worker's establishment is the office to which they report, receive direction or supervision, collect pay, and otherwise stay in contact with their agency, and it is at this establishment where the log is kept.

Agencies should keep in mind that injuries/illnesses that take place while an employee is working from home are not automatically presumed work-related. Work-relationship must be established by demonstrating that the employee's work activity is a discernible cause of the injury/illness.

Section 1904.5(b)(7) addresses the work-relatedness of injuries/illnesses that take place at home. When an employee is working from home on federal agency business, and reports an injury/illness to his or her supervisor, and the employee's work activity caused or contributed to the injury/illness, the case is considered work-related and must be further evaluated to determine whether the case meets any of the recording criteria (i.e., the injury resulted in medical treatment, days away from work, work restrictions etc.). If the injury/illness at home is related to non-work activities, or the general home environment, the case is not work-related. See, the preamble to the final rule revising OSHA's recordkeeping regulation 66 FR 5915 at 5962 for examples of injuries/illnesses at home that are work-related and non-work-related.

*3. Listing of Federal Establishments*

In order to effectively target Federal workplaces for safety and health inspection, OSHA needs to be able to identify, collect, and track the injury and illness data from each Federal establishment. Today's final rule adds a new basic program element at 29 CFR 1960.72(c) to require each Federal agency to provide OSHA with a comprehensive listing of their establishments, as defined by 29 CFR 1960.2(h), by May 1, 2014. The list must include the department/agency affiliation, a street address, city, state and zip code for each establishment. Federal agencies are also responsible for updating the list when they submit their annual report to the Secretary on occupational safety and health.

The new basic program element at § 1960.72(c) also requires Federal agencies to provide the North American Industry Classification System (NAICS) code for each of the establishments included on their list. NAICS is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. economy. NAICS was developed under the auspices of the Office of Management and Budget (OMB), and adopted in 1997 to replace the Standard Industrial Classification (SIC) system. It was developed jointly by the United States, Canada, and Mexico to allow for a high level of compatibility in business statistics among the North American countries.

The NAICS information will be used by BLS to compile and analyze injury and illness statistical information for the Federal sector. The NAICS information is also important for OSHA and BLS when comparing Federal agency injury and illness information with the private sector or State and local government.

Federal agencies should determine NAICS codes based on the activities in their given establishments. As noted in the NAICS Manual, ''In general, ownership is not a criterion for classification in NAICS. Therefore, government establishments engaged in the production of private-sector-like goods and services should be classified in the same industry as private-sector-establishments engaged in similar activities.'' The official 2012 NAICS Manual is available in print and on CD–ROM from the National Technical Information Service (NTIS) at (800) 553–6847, or through the NTIS Web site at *http://www.ntis.gov.*

**VII. Uncompensated Volunteers and Federal Service**

In general, Federal agencies are prohibited from accepting uncompensated volunteer service. (See 31 U.S.C. 1342, *Limitation on Voluntary Services*). However, some statutes authorize Federal agencies to accept voluntary services during emergencies involving the protection of human life or property (31 U.S.C. 1342); voluntary services to assist disabled Federal employees in performing duties (5 U.S.C. 3102); voluntary services by experts and consultants; and voluntary services by students to further their education (5 U.S.C. 3111). In addition, some Federal agencies, such as the National Park Service and the Forest Service, have specific authorization to accept unpaid services for specific jobs or functions. See Volunteers in the Parks Act of 1969, 16 U.S.C. 18g–18i, and Volunteers in the National Forest Program, 16 U.S.C. 558(a).

OSHA has long considered uncompensated volunteers conducting work for Federal agencies to be covered by the Federal safety and health program. The 1980 final rule which established the basic program elements in 29 CFR 1960.2(g) provides: ''The term 'employee' as used in this part means any person, other than members of the Armed Forces, employed or otherwise suffered, permitted, or required to work by an 'agency.' '' The preamble to the final rule states that OSHA purposefully used a broad definition of employee so that individuals like volunteers would be protected under Federal agency safety and health programs. The preamble also states that occupational safety and health programs are designed to address hazardous working conditions and that when individuals, such as volunteers, are conducting work activities similar to those performed by other paid employees, they should receive all the protections of the Federal safety and health program. The

definition of ''employee'' established in the 1980 final rule remains in the current basic program elements for Federal agency safety and health programs set forth at 29 CFR 1960.2(g).

The original injury and illness recordkeeping system for the Federal sector required civilian Executive Branch agencies to record occupational injury and illness information only when such information was also reported to the Office of Workers' Compensation Programs (OWCP). As such, occupational injuries and illnesses were recordable only if a medical expense was incurred or expected, or if the employee was away from work or on leave without pay (LWOP) or continuation of pay (COP) as a result of the injury or illness. Because the Federal Employees' Compensation Act (FECA) as amended (5 U.S.C. 1801 *et seq.*) generally covers uncompensated volunteers, occupational injury and illness information for volunteers was recorded by Federal agencies under the original FECA-based recordkeeping system in Part 1960.

Since publication of the revised Federal sector recordkeeping final rule in November 2004, there has been some uncertainty as to whether Federal agencies should record occupational injury and illness information for volunteer workers. While OSHA has consistently considered volunteers to be within the definition of employee for purposes of 29 CFR Part 1960, the preamble to the private sector Part 1904 recordkeeping final rule issued in 2001 essentially states that unpaid volunteers in the private sector are not covered. In 2004, when OSHA adopted most of the provisions from the Part 1904 system to the Federal sector, the Agency did not intend to exclude individuals performing voluntary services for Federal agencies from the Part 1960, Subpart I, recordkeeping system. As a result, OSHA wishes to make clear that the injuries and illnesses of volunteers conducting work activities for Federal agencies, including both unpaid workers and those individuals receiving minimal compensation for services provided, be recorded under the revised Federal sector recordkeeping system.

A number of Federal agencies use large numbers of both full and part-time volunteers to perform various work activities. For example, in Fiscal Year 2009, approximately 173,000 volunteers conducted 5,700,000 work hours for the National Park Service; 95,248 volunteers conducted 3,014,820 work hours for the Forest Service; and 84,367 volunteers conducted 11,897,208 work hours for the Department of Veterans Affairs. The estimates include unpaid volunteers, as well as those individuals receiving minimal compensation, such as meals or academic credit, for services provided.

In some cases, the work activities conducted by volunteers for Federal agencies are similar to those conducted by full-time paid Federal employees. Volunteers may also be working alongside full-time Federal employees, and may be exposed to the same hazards in the workplace. Depending on the number of volunteers working at a particular Federal establishment, the recording of volunteer injury and illness information may produce a more accurate picture of the effectiveness of the establishment's occupational safety and health program. This is of particular concern to OSHA since occupational injury and illness information is used by safety and health personnel and workers to recognize and eliminate hazards in the workplace.

One reason given as part of OSHA's rationale for amending the Part 1960 recordkeeping requirements in November 2004 was to resolve the incompatibility of data that existed between the private sector and the Federal sector. However, one essential difference still remains between the two recordkeeping systems, specifically as it relates to the treatment of injuries and illnesses to volunteers. As previously discussed, the preamble to the January 2001 private sector Part 1904 recordkeeping final rule essentially states that the injuries and illnesses of unpaid volunteers should not be recorded. In the Federal sector, uncompensated volunteers are considered employees and, therefore, subject to the Part 1904 recordkeeping requirements. In order to allow for valid comparisons of injury and illness data between the private and Federal sectors, it is necessary to be able to segregate the recordable injuries to volunteers in the Federal sector from those to paid Federal civilian workers and contractors who are supervised on a day-to-day basis by Federal agency personnel. Section 1960.73(b) of today's final rule requires that Federal agencies designate a ''V'' in front of the OPM job title series number when recording the injuries and illnesses of uncompensated volunteers on the OSHA Form 300 or equivalent. (See the discussion below regarding entry of the OPM job series number in Column (c) of the OSHA log). Agencies should use the OPM job series number that most closely relates to the type of work being performed by the volunteer at the time of injury or illness. Section 1960.73(c) of today's final rule also requires that Federal agencies with recordable injuries and illnesses to volunteers separately track the total number of hours worked by volunteers, and report this information to OSHA with their annual recordkeeping data submissions.

## VIII. Federal Agency Employees That Supervise Workers

Section 1904.31 requires employers to record the recordable injuries and illnesses of all their employees, whether classified as labor, executive, hourly, salaried, part-time, seasonal, or migrant workers. Employers are also required to record the recordable injuries and illnesses of all employees they supervise on a day-to-day basis, even if these workers are not carried on the employer's payroll. Day-to-day supervision generally exists when the employer ''supervises not only the output, product, or result to be accomplished by the person's work, but also the details, means, methods and processes by which the work objective is accomplished.'' (See *OSHA's January 15, 2004 letter of interpretation to Leann M. Johnson-Koch: http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=24735*).

The requirements in § 1904.31 assign the responsibility for recording and reporting to the employer with the greatest amount of control over the working conditions that led to the injury or illness. OSHA stated in the 2001 preamble to the final rule revising the Part 1904 regulation that the supervising employer is in the best position to obtain the necessary injury and illness information due to its control over the worksite and its familiarity with the work tasks and the work environment. The employer with day-to-day supervision is also in the best position to use the injury and illness data to learn about and correct hazards in the workplace.

For the Federal sector, the requirements in § 1904.31 mean that Federal agencies are responsible for recording not only the recordable injuries and illnesses of their own Federal employees, but also are responsible for recording the recordable injuries and illnesses of all workers they supervise on a day-to-day basis.

Federal agencies often use outside contractors to provide goods and services, or employ temporary workers from private sector temporary or leasing agencies. For purposes of recording the injuries and illnesses of private sector workers, the key question for Federal agencies is whether they supervise such workers on a day-to-day basis. When making determinations as to whether to record the injuries and illnesses of

private sector workers, Federal agencies must use the criteria set forth in § 1904.31 concerning day-to-day supervision. Of course, if a private contractor or temporary agency is conducting work at a Federal establishment, and provides day-to-day supervision for its employees, the contractor or temporary agency, not the Federal agency, would be responsible for recording injuries and illnesses.

Federal agencies are also responsible for recording the recordable injuries and illnesses of employees from other Federal agencies they supervise on a day-to-day basis. For example, if a Federal employee from the Department of Commerce is detailed to a Department of Transportation (DOT) establishment, the DOT establishment would be responsible for recording any recordable injury or illness if the detailed employee is supervised by DOT personnel on a day-to-day basis. On the other hand, if for example, a Federal employee from the Department of Interior is working at a Department of Treasury establishment, but is still being supervised on a day-to-day basis by his or her home office, the Department of Interior would be responsible for recording injuries and illnesses to their employee.

Because the basic program elements in Part 1960 apply to all Federal establishments worldwide, Federal establishments located in foreign countries are responsible for recording the injuries and illnesses (and calculating the total number of hours worked) of all workers they supervise on a day-to-day basis, even if such individuals are foreign nationals. As with other workers not generally considered ''employees'' for other purposes, the recording by overseas Federal establishments of injuries and illnesses sustained by foreign nationals they supervise on a day-to-day basis will provide useful information to Federal agencies in their efforts to ensure a safe and healthy workplace for all workers.

*1. Recording Injuries and Illnesses of Federal Employees From the Same Department or Bureau*

In the private sector, § 1904.30(b)(4) addresses the issue of employees who report to one establishment but are injured or made ill at other locations of the same company. Under such circumstances, employers must record cases on the log at the location where the employee became injured or ill. In OSHA's view, in the majority of cases, the place where the injury or illness occurred is the most useful recording location. The events or exposures that caused the case are most likely to be present at that location, so the data are useful for analysis in that location's records. If the case is recorded at the employee's home establishment, the injury or illness data have been disconnected from the place where the case occurred and, therefore, are less likely to be used to identify and correct any hazard. Of course, if an employee is working under the day-to-day supervision of his or her own employer, and the injury or illness occurred at another employer's establishment, or while the employee was in transit, the case would be recorded on the log of the employee's home establishment.

For purposes of Section 1904.30, the Department or Bureau is considered the employer of a Federal employee. As such, the Federal establishment where the injury or illness took place is responsible for recording the case on its log when the incident involves a Federal employee from the same Department or Bureau. For example, if an employee from the Department of Labor's OSHA is conducting a safety and health inspection at a Department of Labor Mine Safety and Health Administration (MSHA) establishment, and sustains an injury or illness, the case would be recorded on the log of the MSHA establishment. Under 1904.30(b)(4), even though the OSHA employee is under the day-to-day supervision of his or her own OSHA establishment, because the employee was injured or made ill at an establishment operated by the same employer, the injury or illness would be recorded on the MSHA log.

## IX. Other Issues Addressed by Today's Final Rule

*1. Job Title on the OSHA Form 300*

As noted elsewhere in today's preamble, Federal agencies are required to record each recordable injury and illness on the OSHA 300 Log or equivalent. Column (c) of the OSHA 300 Log asks for the ''job title'' of the injured or ill employee.

When filling out the OSHA 300 Log or equivalent, § 1960.73(a) requires Federal agencies to enter all four digits of the employee's job series number in Column (c). For example, agencies should enter ''4607 Carpenter'' or ''0334 Computer Specialist.'' Recording the job series number on the OSHA 300 Form will help identify occupations across the Federal sector that are experiencing higher injury and illness rates, and allow Federal agencies and OSHA to focus safety and health training on these occupations. When entering the information in Column (c) for private sector contractors they supervise on a daily basis, Federal agencies should enter the four digit job series number that best reflects the tasks undertaken by that employee.

*2. Certification of the OSHA 300–A Annual Summary*

Section 1904.32(a) of OSHA's private sector recordkeeping regulation requires employers to review their OSHA 300 Log for completeness and accuracy, and prepare an Annual Summary of the OSHA 300 Log using the OSHA Form 300–A, or an equivalent form. The summary must be certified for accuracy and completeness and posted in the workplace by February 1 of the year following the year covered by the summary. Section 1904.32(b)(3) provides that a company executive must certify that he or she examined the OSHA 300 Log and that he or she reasonably believes, based on his or her knowledge of the process by which the information was recorded, that the annual summary is correct and complete.

For Federal agencies, the basic program element at § 1960.67 provides that the person who performs the certification shall be one of the following: (1) The senior management establishment official; (2) the head of the agency for which the senior management official works; or (3) any management official who is in the direct chain of command between the senior establishment management official and the head of the Agency. The note following the basic program element at 1960.67 makes clear that the requirement for certification of Federal agency injury and illness records is necessary because the private sector position titles in 29 CFR part 1904 do not correspond with Federal agency position titles for agency executives. In the preamble to the 2004 final rule revising the Federal agency recordkeeping system, OSHA stated that the certifying official is responsible for ensuring that systems and processes are in place, and for holding the recordkeeper accountable, (See 69 FR 68797). This official must certify that he or she has examined the document and reasonably believes, based on his or her knowledge of the process by which the information was recorded, that the annual summary is accurate and complete.

Since 2004, some Federal agencies have had questions about which official is responsible for certifying the Annual Summary. Under the basic program element at 1960.67, the senior management official at the Federal establishment, such as an Area Office

Director, would have the authority to certify the summary. Also, the head of the Federal agency, such as the Assistant Secretary or Under Secretary, can certify the summary. Finally, any management official, such as a Regional Administrator, who is in the direct chain of command between the senior establishment official and the head of the Agency, can certify the summary.

It is important to note that while Federal agencies have several options concerning which official can certify the Annual Summary, the individual must still reasonably believe, based on his or her knowledge of the process by which the information in the Log was reported and recorded, that the Log and Summary are ''true'' and ''complete.'' Having a reasonable belief that the records are complete and accurate would suggest, at a minimum, that the certifying official is familiar with OSHA's recordkeeping requirements, and the Federal agency's recordkeeping practices and policies, has read the Log and Summary, and has obtained assurance from the staff responsible for maintaining the records that all of OSHA's requirements have been met and all practices and policies followed. In most cases, the certifying official will be familiar with the details of some of the injuries and illnesses that have occurred at the establishment and will, therefore, be able to spot check the 300 Log to see if those cases have been entered correctly.

*3. The Date for Submitting Annual Reports on Federal Agency Safety and Health*

Section 19(a)(5) of the OSH Act and Section 1–201(l) of Executive Order 12196 require all Federal agencies to submit to the Secretary of Labor an annual report on their agency's occupational safety and health program. The existing basic program element at § 1960.71(a) requires each Federal agency to submit their report by January 1 of each year, and include a description of the agency's occupational safety and health program for the previous fiscal year, objectives for the current fiscal year, and a summary of the agency's self-evaluation of the effectiveness of their safety and health program. The basic program element also states that the Secretary provide the agencies with the guidelines and format for the reports.

Section 1960.71(b) provides that the Secretary must submit to the President an annual summary report on the status of Federal employee occupational safety and health. The report to the President, which is developed by OSHA's Office of Federal Agency Programs, is partially based on the information submitted by Federal agencies in their annual reports. The basic program element also requires the Secretary to submit the annual report to the President by October 1 of each year.

When OSHA revised the Federal agency occupational injury and illness recordkeeping requirements in November 2004, it established a system based on the private sector requirements in Part 1904, which requires the recording of injuries and illnesses and the maintenance of records on a calendar year basis. Accordingly, in order for Federal agencies to evaluate and submit injury and illness data from the entire calendar year, it is necessary to revise the date when Federal agencies must submit their annual report.

Today's final rule amends the basic program element at 29 CFR 1960.71(a)(1), by revising the date when Federal agencies must submit their annual report to the Secretary from January 1 to May 1. This change is consistent with the timeline established for maintaining records in the Part 1904 recordkeeping system, and will allow Federal agencies to incorporate calendar year injury and illness information into their annual reports. Today's final rule also amends the basic program element at 29 CFR 1960.71(b) which establishes the date by which OSHA must submit the Secretary of Labor's Report to the President on Federal Department and Agency Safety and Health Program Activity. Section 1960.71(b) is amended to require this report be submitted to the President by January 1, or three months later than the previous due date of October 1, while relying on fiscal year data.

*4. Subparts A and B of Part 1904 Are Not Applicable to Federal Agencies*

The November 2004 final rule revising the reporting and recording requirements for Federal agencies incorporated most of the provisions from the OSHA private sector recordkeeping regulation at 29 CFR Part 1904. The basic program element at § 1960.66(b) provides: ''Except as modified by this subpart, Federal agency injury and illness recording and reporting requirements will be the same as 29 CFR Part 1904 subparts C, D, E, and G''.

OSHA did not incorporate Subpart A, *Purpose,* from the Part 1904 regulation because the basic program element at 29 CFR 1960.66(a). already includes a ''Purpose, scope, and general provisions'' section applicable to Federal agency recordkeeping. Also, Subpart B, *Scope,* to Part 1904, which includes Section 1904.1, *partial exemption for employees with fewer than 10 employees; § 1904.2, partial exemption for establishments in certain industries;* and § 1904.3, *keeping records for more than one agency,* is not applicable to Federal agency recordkeeping. Accordingly, the recordkeeping requirements for Federal agencies set forth at 29 CFR part 1960, Subpart I, are applicable to all Federal establishments, including those that employ fewer than ten employees, and those which conduct work activities considered to be in a partially exempt industry.

*5. United States Postal Service*

The basic program element at 29 CFR 1960.2(b) provides, in part, that the term ''agency'' means: ''an Executive Department, as defined in 5 U.S.C. 101 or any employing unit or authority of the Executive Branch of the Government.'' Section 1960.2(b) also states that the term ''agency'' includes the United States Postal Service (USPS).

In 1998, the Postal Employee Safety Enhancement Act, Public Law 105–241, made the OSH Act applicable to USPS. Under this legislation, the OSH Act applies to USPS in the same manner as to a private sector employer. For purposes of Section 19 of the OSH Act, Executive Order 12196 and the Basic Program Elements at 29 CFR Part 1960, the definition of ''agency'' does not include USPS. This means that USPS is subject to enforcement and penalty provisions of the OSHA Act similar to private employers. Today's final rule revises the basic program element at 29 CFR 1960.2(b) to make clear that the definition of ''agency'' does not include USPS.

*6. Federal Agency Abatement Verification*

Under the OSH Act, OSHA inspects workplaces to determine whether employers are complying with OSHA standards and other statutory and regulatory requirements. In addition, OSHA inspections are conducted to ensure that the hazards are abated. The citation references the alleged violation, notes the proposed penalty, and indicates the date by which the violation is to be abated. Abatement means action by an employer to comply with a cited standard or regulation or to eliminate a recognized hazard identified by OSHA during an inspection.

Employers are required to verify in writing that they have abated cited conditions, in accordance with 29 CFR 1903.19. Section 1903.19(a) provides that the scope of the regulation applies to ''employers'' who receive a citation for a violation of the OSH Act.

The Federal agency equivalent of a ''citation'' is the Notice of Unsafe or Unhealthful Working Conditions (OSHA Notice). The basic program element at § 1960.30 addresses the *abatement of unsafe or unhealthful working conditions.* Among other things, the basic program element provides that when an OSHA Notice is issued, abatement must be within the time set forth in the Notice, or in accordance with an established abatement plan.

The basic program elements do not include procedures for abatement verification when a Federal agency receives an OSHA Notice. In the past, OSHA's written policy has been for Federal agencies to follow the abatement verification procedures for the private sector, (See OSHA Instruction CPL 02–00–150–*Field Operations Manual, Chapter 13, Federal Agency Field Activities*). Today's final rule clarifies that the abatement verification procedures in 29 CFR 1903.19 are generally applicable to Federal agencies.

OSHA notes that several of the provisions in § 1903.19 make reference to abatement verification procedures that are only applicable to private sector employers. For example, § 1903.19(b)(2)(ii), addresses abatement dates for contested citation items for which the Occupational Safety and Health Review Commission (Commission), has issued a final order affirming a violation. Because Federal agencies do not receive citations, and are not able to contest OSHA Notices before the Commission, § 1903.19(b)(2)(ii) would not be applicable to Federal agencies.

Other provisions in § 1903.19 are general and address the procedures used by OSHA to ensure abatement. Specifically, paragraphs (c) through (i) in § 1903.19 include private sector abatement verification provisions that are applicable to Federal agencies. When evaluating the procedures in paragraphs (c) through (i), Federal agencies should substitute the word ''employer'' with ''Federal agency,'' and ''citation'' with ''OSHA Notice.''

Today's final rule amends the basic program element at 29 CFR 1960.30 by adding paragraph (f) and makes clear that the abatement verification procedures in § 1903.19 are generally applicable to Federal agencies.

*7. Access to Medical Records*

In the November 26, 2004 final rule revising Federal agency occupational injury and illness recordkeeping requirements, OSHA inadvertently deleted § 1960.66(f). This section provided that retention and access to employee records must be in accordance with OSHA's regulation at 29 CFR 1910.1020, *Access to employee exposure and medical records.* Today's final rule reestablishes the former basic program element at 29 CFR 1960.66(f). The revised basic program element states: ''Retention and access of employee exposure and medical records shall be in accordance with 29 CFR 1910.1020.''

*8. Financial Management*

Section 1960.7(a) requires the head of each Federal agency to ensure that the agency budget submission includes appropriate financial and other resources to effectively implement and administer the agency's occupational safety and health program. Section 1960.7(b), provides that the Designated Safety and Health Official, management officials in charge of each establishment, safety and health officials at all appropriate levels, and other management officials are responsible for planning, requesting resources, implementing, and evaluating the occupational safety and health program budget in accordance with the regulations of the Office of Management and Budget Circular A–11 (sections 13.2(f) and 13.5(f)), and other relevant documents.

The two sections referenced in 29 CFR 1960.7(b) are from the 1981 version of OMB Circular A–11. Section 13.2(f) states: ''Agencies will assure that estimates reflect full consideration of the administration's goals and responsibilities to provide safe and healthful work places for Federal employees in accordance with the provisions of Executive Order No. 12196 and the related Safety and Health Provisions for Federal Employees of the Secretary of Labor, (CFR Title 29, Chapter XVII, Part 1960).''

Section 13.5(f) states: ''Estimates for the design and construction of Federal facilities and buildings, and for the purchase of equipment, will include amounts required to insure safe and healthful workplaces for Federal employees consistent with the standards promulgated under section 19 of the Occupational Safety and Health Act of 1970. Agencies will assure that estimates for capital improvement will reflect full consideration of the expense of insuring that existing facilities provide safe and healthful places and conditions of employment consistent with these standards.''

Over the years, OMB Circular A–11 has been revised several times. The revisions have resulted in the deletion of Section 13.5(f) and the transfer of some language from Section 13.2(f) to Section 33.1. In order to reduce confusion, and with the realization that the Circular may be revised in the future, OSHA has decided to delete the reference to OMB Circular A–11 in 29 CFR 1960.7(b). OSHA believes that Federal agencies should review and comply with all relevant OMB regulations and documents when evaluating their occupational safety and health budget.

**X. The Current Rulemaking**

The Federal Advisory Council on Occupational Safety and Health (FACOSH) was established by Executive Order 11612 to advise the Secretary of Labor on matters relating to the occupational safety and health of Federal employees.

During its March 11, 2007 meeting, FACOSH voted to establish a subcommittee to determine how best to collect Federal employee injury and illness recordkeeping information. The subcommittee held three meetings on May 31, June 14, and July 31, 2007, to discuss proposed changes to the Federal agency recordkeeping requirements in 29 CFR Part 1960, Subpart I.

The subcommittee was comprised of six voting members, with equal representation from management and labor. The six voting members included representatives from the Department of Defense, Department of Homeland Security, National Aeronautics and Space Administration, Seafarers International Union, American Federation of Government Employees, and American Postal Service Union. In addition, there were several representatives from various Federal agencies who actively participated in the meeting discussions, and offered special technical expertise and perspective, including representatives from the Department of Labor (including BLS), Transportation Safety Administration, NIOSH, and the Smithsonian Institution.

Participants at the subcommittee meetings supported OSHA's collection of injury and illness records from Federal agencies; encouraged OSHA to develop a variety of options for collecting the data; and recommended that OSHA provide a mechanism for agencies to analyze their injury and illness data. The subcommittee also encouraged OSHA to publicize their intentions and to assist agencies who could not currently aggregate their own data. The subcommittee recommendations were presented to the full Council during an October 11, 2007 FACOSH meeting.

OSHA responded to the FACOSH recommendations by writing to Federal

agencies, advising them of the database project, and soliciting a list of Federal agency establishments. OSHA has developed three options for agencies to submit their injury and illness data, with one option offering real-time data entry and analysis capability.

## XI. Administrative Procedure Act

This rule relates to matters of Federal agency management and personnel and, therefore, is exempt from the usual Administrative Procedure Act requirements for prior notice and comment and a 30-day delay in effective date, (See 5 U.S.C. 553(a)(2) and (d)).

The Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) does not apply because this rulemaking, which applies only to Federal agencies, does not create or modify information collection requirements that require the approval of the Office of Management and Budget. Additionally, the Department of Labor has determined that this rulemaking is a nonmajor rule under the Congressional Review Act (5 U.S.C. Chapter 8), and will submit a report thereon to the U.S. Senate, House of Representatives, and General Accounting Office in accordance with that law at the same time this rulemaking document is sent to the Office of the Federal Register for publication.

Because this rulemaking applies only to Federal agencies, the Department of Labor certifies pursuant to the Regulatory Flexibility Act, (5 U.S.C. 605(b)) that this final rule will not have a significant impact on a substantial number of small entities. Similarly, the requirements of the Unfunded Mandates Reform Act of 1995 and Executive Order 13132 addressing ''Federalism'' do not apply. The Department of Labor has also determined that this is not a ''significant regulatory action'' under Section 3(f) of Executive Order 12866, ''Regulatory Planning and Review,'' and that it relates to a matter of agency organization, management, or personnel. See Executive Order 12866; Section 3(d)(3).

## XII. Summary and Explanation of the Final Rule, 29 CFR Part 1960.66(b)

As described below.

## List of Subjects in 29 CFR Part 1960

Government employees, Occupational safety and health, Reporting and recordkeeping requirements.

## Authority and Signature

This document was prepared under the direction of David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor. 200 Constitution Avenue NW., Washington, DC 20210. Accordingly, pursuant to sections 19 and 24 of the Occupational Safety and Health Act of 1970 (84 Stat. 1609, 1614; 29 U.S.C. 668, 673), 5 U.S.C. 553, Secretary of Labor's Order No. 1–2012 (77 FR 3912) and Executive Order 12196, the Department amends 29 CFR part 1960 as set forth below.

Signed at Washington, DC, on July 26, 2013.

**David Michaels,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

For the reasons stated in the preamble, 29 CFR Part 1960 is amended to read as follows:

## PART 1960—BASIC PROGRAM ELEMENTS FOR FEDERAL EMPLOYEE OCCUPATIONAL SAFETY AND HEALTH PROGRAMS AND OTHER RELATED MATTERS

■ 1. The authority citation for Part 1960 continues to read as follows:

**Authority:** Sections 19 and 24 of the Occupational Safety and Health Act of 1970 (84 Stat. 1609, 1614; 29 U.S.C. 668, 673, 5 U.S.C. 553, Secretary of Labor's Order No. 1–90 (55 FR 9033), and Executive Order 12196.

■ 2. Amend § 1960.2 by revising paragraph (b) to read as follows:

### § 1960.2 Definitions.

* * * * *

(b) The term *agency* for the purposes of this part means an Executive Department, as defined in 5 U.S.C. 101, or any employing unit of authority of the Executive Branch of the Government. For the purposes of this part to the extent it implements section 19 of the Act, the term *agency* does not include the United States Postal Service. By agreement between the Secretary of Labor and the head of an agency of the Legislative or Judicial Branches of the Government, these regulations may be applicable to such agencies.

* * * * *

■ 3. Amend § 1960.7 by revising paragraph (b) to read as follows:

### § 1960.7 Financial management.

* * * * *

(b) The Designated Agency Safety and Health Official, management officials in charge of each establishment, safety and health officials at all appropriate levels, and other management officials shall be responsible for planning, requesting resources, implementing, and evaluating the occupational safety and health program budget in accordance with all relevant Office of Management and Budget regulations and documents.

* * * * *

■ 4. Amend § 1960.30 by adding paragraph (f) to read as follows:

### § 1960.30 Abatement of unsafe or unhealthful working conditions.

* * * * *

(f) The procedures OSHA will use to verify Federal agency abatement are included in the private sector guidelines at 29 CFR 1903.19.

* * * * *

■ 5. Amend § 1960.66 by adding paragraph (f) to read as follows:

### § 1960.66 Purpose, scope and general provisions.

* * * * *

(f) Retention and access of employee exposure and medical records shall be in accordance with 29 CFR 1910.1020.

* * * * *

■ 6. Amend § 1960.71 by revising paragraphs (a)(1) and (b) to read as follows:

### § 1960.71 Agency annual reports.

(a)* * *

(1) Each agency must submit to the Secretary by May 1 of each year a report describing the agency's occupational safety and health program of the previous calendar year and objectives for the current fiscal year. The report shall include a summary of the agency's self-evaluation finding as required by § 1960.78(b).

* * * * *

(b) The Secretary will submit to the President by January 1 of each year a summary report of the status of the occupational safety and health of Federal employees based on agency reports, evaluations of individual agency progress and problems in correcting unsafe or unhealthful working conditions, and recommendations for improving their performance.

■ 7. Add new § 1960.72 to read as follows:

### § 1960.72 Reporting Federal Agency Injury and Illness Information.

(a) Each agency must submit to the Secretary by May 1 of each year all information included on the agency's previous calendar year's occupational injury and illness recordkeeping forms. The information submitted must include all data entered on the OSHA Form 300, Log of Work-Related Injuries and Illnesses (or equivalent); OSHA Form 301, Injury and Illness Incident Report (or equivalent); and OSHA Form 300A, Summary of Work-Related Injuries and Illnesses (or equivalent).

(b) The Secretary must provide each agency by January 15 of each year with the format and guidelines for electronically submitting the agency's occupational injury and illness recordkeeping information.

(c) Each agency must submit to the Secretary by May 1, 2014, a list of all establishments. The list must include information about the department/agency affiliation, NAICS code, a street address, city, state and zip code. Federal agencies are also responsible for updating their list of establishments by May 1 of each year when they submit the annual report to the Secretary required by § 1960.71(a)(1).

* * * * *

■ 8. Add new § 1960.73 to read as follows:

**§ 1960.73 Federal agency injury and illness recordkeeping forms.**

(a) When filling out the OSHA Form 300 or equivalent, each agency must enter the employee's OPM job series number and job title in Column (c).

(b) When recording the injuries and illnesses of uncompensated volunteers, each agency must enter a ''V'' before the OPM job series number in Column (c) of the OSH Form 300 log or equivalent.

(c) Each agency must calculate the total number of hours worked by uncompensated volunteers.

[FR Doc. 2013–18457 Filed 8–2–13; 8:45 am]

BILLING CODE 4510–26–P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 117

**[Docket No. USCG–2013–0687]**

## Drawbridge Operation Regulation; Albemarle Sound to Sunset Beach, Atlantic Intracoastal Waterway (AICW), Wrightsville Beach, NC

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of deviation from drawbridge regulation.

**SUMMARY:** The Coast Guard has issued a temporary deviation from the operating schedule that governs the operation of the S.R. 74 Bridge, at mile 283.1, over the AICW, at Wrightsville Beach, NC. The deviation is necessary to facilitate electrical system and equipment upgrades to the bridge. This temporary deviation allows the drawbridge to remain in the closed to navigation position.

**DATES:** This deviation is effective from 7 p.m. on August 19, 2013 to 7 p.m. August 27, 2013.

**ADDRESSES:** The docket for this deviation, [USCG–2013–0687] 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 Mr. Jim Rousseau, Bridge Administration Branch Fifth District, Coast Guard; telephone (757) 398–6557, email *James.L.Rousseau2@uscg.mil*. If you have questions on reviewing the docket, call Barbara Hairston, Program Manager, Docket Operations, (202) 366–9826.

**SUPPLEMENTARY INFORMATION:** The North Carolina Department of Transportation, who owns and operates this bascule bridge, has requested a temporary deviation from the current operating regulations set out in 33 CFR 117.821 (a)(4), to facilitate electrical system and mechanical equipment upgrades to the bridge.

Under the regular operating schedule, the draw for the S.R. 74 Bridge, at mile 283.1 over the AICW, at Wrightsville Beach, NC shall open on signal for commercial vessels at all times and on signal for pleasure vessels except between 7 a.m. and 7 p.m., need only open on the hour; and except for annual triathlon events that occur from September through November. The S.R. 74 Bridge has a temporary vertical clearance in the closed position of 18 feet above mean high water due to additional ongoing maintenance.

Under this temporary deviation, the drawbridge will be maintained in the closed to navigation position, beginning at 7 p.m., on Monday, August 19, 2013 until 7 p.m., on Tuesday August 20, 2013. In the event of inclement weather, the alternate dates and times will begin at 7 p.m., on Monday August 26, 2013 ending at 7 p.m., on Tuesday August 27, 2013. The bridge will operate under its normal operating schedule at all other times. The Coast Guard has carefully coordinated the restrictions with commercial and recreational waterway users.

Vessels able to pass under the bridge in the closed position may do so at anytime and are advised to proceed with caution. The bridge will be able to open for emergencies but at a slower rate. There is no immediate alternate route for vessels transiting this section of the AICW but vessels may pass before and after the closure each day. The Coast Guard will also inform additional waterway users through our Local and Broadcast Notices to Mariners of the closure periods for the bridge so that vessels can arrange their transits to minimize any impacts caused by the temporary deviation.

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

Dated: July 25, 2013.

**Waverly W. Gregory, Jr.,**

*Bridge Program Manager, Fifth Coast Guard District.*

[FR Doc. 2013–18740 Filed 8–2–13; 8:45 am]

BILLING CODE 9110–04–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 81

**[EPA–HQ–OAR–2012–0233; FRL 9841–4]**

**RIN 2060–AR18**

## Air Quality Designations for the 2010 Sulfur Dioxide ($SO_2$) Primary National Ambient Air Quality Standard

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

**ACTION:** Final rule.

**SUMMARY:** This rule establishes air quality designations for certain areas in the United States for the 2010 primary Sulfur Dioxide ($SO_2$) National Ambient Air Quality Standard (NAAQS). The EPA is issuing this rule to identify areas that, based on recorded air quality monitoring data showing violations of the NAAQS, do not meet the 2010 $SO_2$ NAAQS and areas that contribute to $SO_2$ air pollution in a nearby area that does not meet the $SO_2$ NAAQS. At this time, the EPA is designating as nonattainment most areas in locations where existing monitoring data from 2009–2011 indicate violations of the 1-hour $SO_2$ standard. The EPA intends to address in separate future actions the designations for all other areas for which the agency is not yet prepared to issue designations and that are consequently not addressed in this final rule. The Clean Air Act (CAA) directs areas designated nonattainment by this rule to undertake certain planning and pollution control

activities to attain the NAAQS as expeditiously as practicable.

**DATES:** *Effective Date:* The effective date of this rule is October 4, 2013.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2012–0233. All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744 and the telephone number for the Air Docket is (202) 566–1742.

In addition, the EPA has established a Web site for this rulemaking at: *http://www.epa.gov/so2designations.* The Web site includes the EPA's final $SO_2$ designations, as well as state and tribal initial recommendation letters, the EPA's modification letters, technical support documents, responses to comments and other related technical information.

**FOR FURTHER INFORMATION CONTACT:** For general questions concerning this action, please contact Rhonda Wright, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Planning Division, C539–04, Research Triangle Park, NC 27711, telephone (919) 541–1087, email at *wright.rhonda@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

*Regional Office Contacts:*

Region I—Donald Dahl (617) 918–1657,

Region II—Kenneth Fradkin (212) 637–3702,

Region III—Ruth Knapp (215) 814–2191,

Region IV—Lynorae Benjamin (404) 562–9040,

Region V—John Summerhays (312) 886–6067,

Region VI—Dayana Medina (214) 665–7241,

Region VII—Larry Gonzalez (913) 551–7041,

Region VIII—Crystal Ostigaard (303) 312–6602,

Region IX—John Kelly (415) 947–4151, and

Region X—Steve Body (206) 553–0782.

The public may inspect the rule and state-specific technical support information at the following locations:

| Regional offices | States |
|---|---|
| Dave Conroy, Chief, Air Programs Branch, EPA New England, 1 Congress Street, Suite 1100, Boston, MA 02114–2023, (617) 918–1661. | Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont. |
| Richard Ruvo, Chief, Air Planning Section, EPA Region II, 290 Broadway, 25th Floor, New York, NY 10007–1866, (212) 637–4014. | New Jersey, New York, Puerto Rico and Virgin Islands. |
| Cristina Fernandez, Associate Director, Office of Air Program Planning, EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2187, (215) 814–2178. | Delaware, District of Columbia, Maryland, Pennsylvania, Virginia and West Virginia. |
| R. Scott Davis, Chief, Air Planning Branch, EPA Region IV, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, 12th Floor, Atlanta, GA 30303, (404) 562–9127. | Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee. |
| John Mooney, Chief, Air Programs Branch, EPA Region V, 77 West Jackson Street, Chicago, IL 60604, (312) 886–6043. | Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin. |
| Guy Donaldson, Chief, Air Planning Section, EPA Region VI, 1445 Ross Avenue, Dallas, TX 75202, (214) 665–7242. | Arkansas, Louisiana, New Mexico, Oklahoma and Texas. |
| Joshua A. Tapp, Chief, Air Programs Branch, EPA Region VII, 11201 Renner Blvd., Lenexa, KS 66129, (913) 551–7606. | Iowa, Kansas, Missouri and Nebraska. |
| Gail Fallon, Acting Unit Chief, Air Quality Planning Unit, EPA Region VIII, 1595 Wynkoop Street, Denver, CO 80202–1129, (303) 312–6281. | Colorado, Montana, North Dakota, South Dakota, Utah and Wyoming. |
| Doris Lo, Air Planning Office, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972–3959. | American Samoa, Arizona, California, Guam, Hawaii, Nevada and Northern Mariana Islands. |
| Debra Suzuki, Manager, State and Tribal Air Programs, EPA Region X, Office of Air, Waste, and Toxics, Mail Code OAQ–107, 1200 Sixth Avenue, Seattle, WA 98101, (206) 553–0985. | Alaska, Idaho, Oregon and Washington. |

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## I. Preamble Glossary of Terms and Acronyms

The following are abbreviations of terms used in the preamble.

APA Administrative Procedure Act
CAA Clean Air Act
CFR Code of Federal Regulations
DC District of Columbia
EO Executive Order
EPA Environmental Protection Agency
FR Federal Register
NAAQS National Ambient Air Quality Standards
NTTAA National Technology Transfer and Advancement Act
OMB Office of Management and Budget
$SO_2$ Sulfur Dioxide
$SO_X$ Sulfur Oxides
RFA Regulatory Flexibility Act
SIP State Implementation Plan
UMRA Unfunded Mandate Reform Act of 1995
TAR Tribal Authority Rule
TSD Technical Support Document
U.S. United States
VCS Voluntary Consensus Standards

## II. What is the purpose of this document?

The purpose of this action is to announce and promulgate designations and boundaries for certain areas of the country not meeting the 2010 $SO_2$ NAAQS based on available information, in accordance with the requirements of the CAA. The initial list of areas being designated nonattainment in each state and the boundaries of each area appear in the tables within the regulatory text.

This notice identifies the 29 initial areas being designated as nonattainment areas for the 2010 $SO_2$ NAAQS. The basis for designating each area as ''nonattainment'' is monitored air quality data from calendar years 2009–2011 indicating a violation of the NAAQS in the area. For these areas being designated nonattainment, the CAA directs states to develop State Implementation Plans (SIPs) that meet the requirements of sections 172(c) and 191–192 of the CAA and provide for attainment of the NAAQS as expeditiously as practicable, but no later than October 4, 2018. The CAA directs states to submit these SIPs to the EPA within 18 months of the effective date of these designations, i.e., by April 6, 2015.

## III. What is sulfur dioxide?

$SO_2$ is one of a group of highly reactive gasses known as ''oxides of sulfur'' ($SO_X$). The largest sources of $SO_2$ emissions are from fossil fuel combustion at power plants (73 percent) and other industrial facilities (20 percent). Smaller sources of $SO_2$ emissions include industrial processes, such as extracting metal from ore, and the burning of high sulfur containing fuels by locomotives, large ships and non-road equipment. $SO_2$ is linked with a number of adverse effects on the respiratory system.

## IV. What is the 2010 $SO_2$ NAAQS and what are the health concerns that it addresses?

The Administrator signed a final rule revising the primary $SO_2$ NAAQS on June 2, 2010. The rule was published in the **Federal Register** on June 22, 2010 (75 FR 35520), and became effective on August 23, 2010. Based on the Administrator's review of the air quality criteria for oxides of sulfur and the primary NAAQS for oxides of sulfur as measured by $SO_2$, the EPA revised the primary $SO_2$ NAAQS to provide requisite protection of public health with an adequate margin of safety. Specifically, the EPA established a new 1-hour $SO_2$ standard at a level of 75 parts per billion (ppb), which is met at an ambient air quality monitoring site when the 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations is less than or equal to 75 ppb, as determined in accordance with Appendix T of 40 CFR part 50. 40 CFR 50.17(a)–(b). The EPA also established provisions to revoke both the existing 24-hour and annual primary $SO_2$ standards, subject to certain conditions. 40 CFR 50.4(e).

Current scientific evidence links short-term exposures to $SO_2$, ranging from 5 minutes to 24 hours, with an array of adverse respiratory effects including bronchoconstriction and increased asthma symptoms. These effects are particularly important for asthmatics at elevated ventilation rates (e.g., while exercising or playing). Studies also show a connection between short-term exposure and increased visits to emergency departments and hospital admissions for respiratory illnesses, particularly in at-risk populations including children, the elderly and asthmatics.

The EPA's NAAQS for $SO_2$ is designed to protect against exposure to the entire group of $SO_X$. $SO_2$ is the component of greatest concern and is used as the indicator for the larger group of gaseous $SO_X$. Other gaseous $SO_X$ (e.g., $SO_3$) are found in the atmosphere at concentrations much lower than $SO_2$.

Emissions that lead to high concentrations of $SO_2$ generally also lead to the formation of other $SO_X$. Control measures that reduce $SO_2$ can generally be expected to reduce people's exposures to all gaseous $SO_X$. This may also have the important co-benefit of reducing the formation of fine sulfate particles, which pose significant public health threats. $SO_X$ can react with other compounds in the atmosphere to form small particles. These particles penetrate deeply into sensitive parts of the lungs and can cause or worsen respiratory disease, such as emphysema and bronchitis, and can aggravate existing heart disease, leading to increased hospital admissions and premature death.[1] The EPA's NAAQS for particulate matter are designed to provide protection against these health effects.

## V. What are the CAA requirements for air quality designations and what action has the EPA taken to meet these requirements?

After the promulgation of a new or revised NAAQS, the EPA is required to designate areas as ''nonattainment,'' ''attainment,'' or ''unclassifiable,'' pursuant to section 107(d)(1) of the CAA.

The process for designating areas following promulgation of a new or revised NAAQS is contained in section 107(d) of the CAA. The CAA requires the EPA to complete the initial designations process within 2 years of promulgating a new or revised standard. If the Administrator has insufficient information to make these designations by that deadline, the EPA has the authority to extend the deadline for completing designations by up to 1 year. On July 27, 2012, the EPA announced that it had insufficient information to complete the designations for the 1-hour $SO_2$ standard within 2 years and extended the designations deadline to June 3, 2013.

At this time, the EPA is initially designating as nonattainment most areas in locations where existing monitoring data from 2009–2011 indicate violations of the 1-hour $SO_2$ standard. In some cases, we have had to use data from a different three-year period or are still evaluating whether data from 2009–2011 are influenced by exceptional events. In separate future actions, the EPA intends to address the designations for all other areas for which the agency is not yet prepared to issue designations and that are consequently not addressed in this final rule. With input from a diverse group of stakeholders, the EPA has developed a comprehensive implementation strategy for the future $SO_2$ designations actions that focuses resources on identifying and addressing unhealthy levels of $SO_2$ in areas where people are most likely to be exposed to violations of the standard. For

[1] *See* Fact Sheet Revisions to the Primary National Ambient Air Quality Standard, Monitoring Network, and Data Reporting Requirements for Sulfur Dioxide at *http://www.epa.gov/airquality/sulfurdioxide/pdfs/20100602fs.pdf.*

informational purposes, the strategy is available at: *http://www.epa.gov/airquality/sulfurdioxide/implement.html.* The EPA plans to continue to work closely with state, tribal and local air quality management agencies to ensure health-protective, commonsense implementation of the 1-hour $SO_2$ NAAQS.

By not later than 1 year after the promulgation of a new or revised NAAQS, CAA section 107(d)(1)(A) provides that each state governor is required to recommend air quality designations, including the appropriate boundaries for areas, to the EPA. The EPA reviews those state recommendations and is authorized to make any modifications the Administrator deems necessary. The statute does not define the term ''necessary,'' but the EPA interprets this to authorize the Administrator to modify designations that did not meet the statutory requirements or were otherwise inconsistent with the facts or analysis deemed appropriate by the EPA. If the EPA is considering modifications to a state's initial recommendation, the EPA is required to notify the state of any such intended modifications to its recommendation not less than 120 days prior to the EPA's promulgation of the final designation. During this period of no less than 120 days, if the state does not agree with the EPA's modification, it has an opportunity to respond to the EPA and to demonstrate why it believes the modification proposed by the EPA is inappropriate, as contemplated by section 107(d)(1)(B)(ii). Even if a state fails to provide any recommendation for an area, in whole or in part, the EPA still must promulgate a designation that the Administrator deems appropriate, pursuant to section 107(d)(1)(B)(ii).

Section 107(d)(1)(A)(i) of the CAA defines a nonattainment area as any area that does not meet an ambient air quality standard or that is contributing to ambient air quality in a nearby area that does not meet the standard. If an area meets either prong of this definition, then the EPA is obligated to designate the area as ''nonattainment.''

The EPA believes that section 107(d) provides the agency with discretion to determine how best to interpret the terms in the definition of a nonattainment area (e.g., ''contributes to'' and ''nearby'') for a new or revised NAAQS, given considerations such as the nature of a specific pollutant, the types of sources that may contribute to violations, the form of the standards for the pollutant, and other relevant information. In particular, the EPA believes that the statute does not require the agency to establish bright line tests or thresholds for what constitutes ''contribution'' or ''nearby'' for purposes of designations.[2]

Similarly, the EPA believes that the statute permits the EPA to evaluate the appropriate application of the term ''area'' to include geographic areas based upon full or partial county boundaries, and contiguous or non-contiguous areas, as may be appropriate for a particular NAAQS. For example, section 107(d)(1)(B)(ii) explicitly provides that the EPA can make modifications to designation recommendations for an area ''or portions thereof,'' and under section 107(d)(1)(B)(iv) a designation remains in effect for an area ''or portion thereof'' until the EPA redesignates it.

Designation activities for federally-recognized tribal governments are covered under the authority of section 301(d) of the CAA. This provision of the CAA authorizes the EPA to treat eligible tribes in a similar manner as states. Pursuant to section 301(d)(2), the EPA promulgated regulations, known as the Tribal Authority Rule (TAR), on February 12, 1999. 63 FR 7254, codified at 40 CFR part 49. That rule specifies those provisions of the CAA for which it is appropriate to treat tribes in a similar manner as states. Under the TAR, tribes may choose to develop and implement their own CAA programs, but are not required to do so. The TAR also establishes procedures and criteria by which tribes may request from the EPA a determination of eligibility for such treatment. The designations process contained in section 107(d) of the CAA is included among those provisions determined to be appropriate by the EPA for treatment of tribes in the same manner as states. Under the TAR, tribes generally are not subject to the same submission schedules imposed by the CAA on states. As authorized by the TAR, tribes may seek eligibility to submit designation recommendations to the EPA. In addition, CAA section 301(d)(4) gives the EPA discretionary authority, in cases where it determines that treatment of tribes as identical to states is ''inappropriate or administratively infeasible,'' to provide for direct administration by regulation to achieve the appropriate purpose.

To date, six tribes have applied under the TAR for eligibility to submit its own recommendations under section 107(d). Nonetheless, the EPA invited all tribes to submit recommendations concerning designations for the 2010 $SO_2$ NAAQS. The EPA worked with the tribes that requested an opportunity to submit designation recommendations. Tribes were provided an opportunity to submit their own recommendations and supporting documentation and could also comment on state recommendations and the EPA modifications.

Designation recommendations and supporting documentation were submitted by most states and several tribes to the EPA by June 3, 2011. After receiving these recommendations, and after reviewing and evaluating each recommendation, the EPA provided a response to the states and tribes on February 7, 2013.[3] In these letter responses, we indicated whether the EPA intended to make modifications to the initial state or tribal recommendations and explained the EPA's reasons for making any such modifications. For the majority of the areas, the EPA agreed with the state's recommended boundary. The EPA requested that states and tribes respond to any proposed EPA modifications by April 8, 2013. The EPA received comments from some states suggesting changes to the EPA's proposed modifications and providing additional information. The EPA evaluated these comments, and all of the timely supporting technical information provided. As a result, and based on that input and analysis, some of the final designations reflect further modifications to the initial state recommendations. The state and tribal letters, including the initial recommendations, the EPA's February 2013 responses to those letters, any modifications, and the subsequent state comment letters, are in the docket for this action.

Although not required by section 107(d) of the CAA, the EPA also provided an opportunity for members of the public to comment on the EPA's February 2013 response letters. In order to gather additional information for the EPA to consider before making final designations, the EPA published a notice on February 15, 2013 (78 FR 1124) which invited the public to comment on the EPA's intended designations. In the notice, the EPA stated that public comments must be received on or before March 18, 2013. The EPA received several requests from stakeholders for additional time to prepare their comments. Some of the requesters noted that the original 30-day comment period was insufficient time to

[2] This view was confirmed in *Catawba County* v. *EPA,* 571 F.3d 20 (DC Cir. 2009).

[3] As indicated in the February 2013 letters, the EPA is not yet prepared to designate any areas in Indian country. The EPA intends to address the designations for these areas in separate future actions.

review the EPA's responses to states' and tribes' recommended designations and to compile meaningful responses due to the complexity of the issues impacting certain areas. Taking that into consideration, the EPA extended the public comment period to April 8, 2013. State and tribal initial recommendations and the EPA's responses, including modifications, were posted on a publically accessible Web site (*http://www.epa.gov/so2designations*). Timely comments from the public and the EPA's responses to significant comments are in the docket for this action.

## VI. What guidance did the EPA issue and how did the EPA apply the statutory requirements and applicable guidance to determine area designations and boundaries?

In the notice of proposed rulemaking for the revised $SO_2$ NAAQS (74 FR 64810; December 8, 2009), the EPA issued proposed guidance on its approach to implementing the standard, including its approach to initial area designations. The EPA solicited comment on that guidance and, in the notice of final rulemaking (75 FR 35520; June 22, 2010), provided further guidance concerning implementation of the standard and how to identify nonattainment areas and boundaries for the $SO_2$ NAAQS. Subsequently, on March 24, 2011, the EPA provided additional designations guidance to assist states with making their recommendations for area designations and boundaries.[4] In that guidance, the EPA recommended that monitoring data from the most recent three consecutive years be used to identify a violation of the $SO_2$ NAAQS. This is appropriate because the form of the $SO_2$ NAAQS is calculated as a 3-year average of the 99th percentile of the yearly distribution of 1-hour daily maximum $SO_2$ concentrations (specifically the most recent 3 consecutive years).[5] The EPA is basing these initial final designations on monitored $SO_2$ concentrations from Federal Reference Method and Federal Equivalent Method monitors that are sited and operated in accordance with 40 CFR Parts 50 and 58. The EPA notes that data from 2008–2010 were the most recent data available to states and tribes when they made their recommendations to the EPA in June 2011. Accordingly, although the determination of whether an area violates the standard was based on 2009–2011 data, the EPA considered state recommendations and data from 2008–2010, as appropriate, in determining boundaries for nonattainment areas.

In the guidance, the EPA stated that the perimeter of a county containing a violating monitor would be the initial presumptive boundary for nonattainment areas, but also stated that the state, tribe and/or the EPA could conduct additional area-specific analyses that could justify establishing either a larger or smaller area. The EPA indicated that the following factors should be considered in an analysis of whether to exclude portions of a county and whether to include additional nearby areas outside the county as part of the designated nonattainment area: (1) Air quality data; (2) emissions-related data; (3) meteorology; (4) geography/topography; and (5) jurisdictional boundaries, as well as other available data. States and tribes may identify and evaluate other relevant factors or circumstances specific to a particular area.

Most states and several tribes submitted their designations recommendations in June 2011. In each case, the EPA reviewed the state recommendations and, where appropriate, the EPA accepted the state's recommendations. However, where the EPA determined that changes were necessary to a state's initial recommendation, we conveyed those preliminary determinations to the state in February 2013, and have worked with states to further review appropriate boundaries.

## VII. What air quality data has the EPA used?

The final $SO_2$ designations contained in this action are based upon violations of the NAAQS determined by air quality monitoring data from calendar years 2009–2011, except where it was necessary or appropriate to use a different three-year period. The form of the standard requires a calculation of monitoring values from 3 consecutive years. The 1-hour primary standard is violated at an ambient air quality monitoring site when the 3-year average of the annual 99th percentile of the daily maximum 1-hour average concentrations exceeds 75 ppb, as determined in accordance with appendix T of 40 CFR part 50. For comparison to the level of the standard, ambient air quality shall be measured by a reference method based on appendix A or A–1, or by a Federal Equivalent Method designated in accordance with 40 CFR part 53.

## VIII. How do designations affect Indian Country?

All counties, partial counties or Air Quality Control Regions listed in the tables within the regulatory text are designated as indicated. For the first round of $SO_2$ designations, the EPA is only designating certain nonattainment areas shown to be violating the NAAQS based on monitored data. There are no areas in Indian Country being designated nonattainment at this time. All remaining areas, including areas of Indian Country, for which the EPA is not yet prepared to issue final designations will be addressed in a subsequent round of designations.

## IX. Where can I find information forming the basis for this rule and exchanges between the EPA, States and tribes related to this rule?

Information providing the basis for this action are provided in several technical support documents (TSDs), a response to comments document (RTC) and other information in the docket. The TSDs, RTC, applicable EPA's guidance memoranda, copies of correspondence regarding this process between the EPA and the states, tribes and other parties, are available for review at the EPA Docket Center listed above in the **ADDRESSES** section of this document and on the agency's $SO_2$ Designations Web site at *http://www.epa.gov/so2designations.* Area-specific questions can be addressed to the EPA Regional Offices.

## X. Statutory and Executive Order Reviews

Upon promulgation of a new or revised NAAQS, the CAA requires the EPA to designate areas as attaining or not attaining the NAAQS. The CAA then specifies requirements for areas based on whether such areas are attaining or not attaining the NAAQS. In this final rule, the EPA assigns designations to selected areas as required.

### *A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action responds to the CAA requirement to promulgate air quality designations after promulgation of a new or revised NAAQS. This type of action is exempt from review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (67 FR 3821, January 21, 2011).

[4] *See,* ''Area Designations for the 2010 Revised Primary Sulfur Dioxide National Ambient Air Quality Standards,'' memorandum to Regional Air Division Directors, Regions I–X, from Stephen D. Page, dated March 24, 2011.

[5] This notice refers to monitoring data for ''calendar years 2009–2011'' which includes data from January 2009 through December 2011.

*B. Paperwork Reduction Act*

This action does not impose an information collection burden under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b). This action responds to the requirement to promulgate air quality designations after promulgation of a new or revised NAAQS. This requirement is prescribed in the CAA section 107 of title 1. This action does not establish any new information collection apart from that already required by law.

*C. Regulatory Flexibility Act*

This final rule is not subject to the Regulatory Flexibility Act (RFA), which generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute. This action is not subject to notice-and-comment requirements under the APA or any other statute because the action is not subject to the APA. CAA section 107(d)(2)(B) does not require the EPA to issue a notice of proposed rulemaking before issuing this final action.

*D. Unfunded Mandates Reform Act*

This action contains no federal mandate under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, local or tribal governments or the private sector. The action imposes no enforceable duty on any state, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 and 205 of the UMRA.

This action 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 does not create any additional requirements beyond those of the CAA and $SO_2$ NAAQS (40 CFR 50.17); therefore, no UMRA analysis is needed. This action establishes nonattainment designations for certain areas of the country for the 2010 $SO_2$ NAAQS. The CAA requires states to develop plans, including control measures, based on the designations for areas within the state.

The EPA believes that any new controls imposed as a result of this action will not cost in the aggregate $100 million or more annually. Thus, this federal action will not impose mandates that will require expenditures of $100 million or more in the aggregate in any 1 year.

*E. Executive Order 13132: Federalism*

This final 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. The CAA establishes the process whereby states take primary responsibility in developing plans to meet the $SO_2$ NAAQS in areas designated nonattainment by this action. This action will not modify the relationship of the states and the EPA for purposes of developing programs to attain and maintain the $SO_2$ NAAQS. Thus, Executive Order 13132 does not apply to this action.

*F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This action concerns the designation of certain areas as nonattainment for the 2010 $SO_2$ NAAQS, but no areas of Indian Country are being designated by this action. Because this action does not have tribal implications, Executive Order 13175 does not apply.

Although Executive Order 13175 does not apply to this rule, the EPA communicated with tribal leaders and environmental staff regarding the designations process. The EPA also sent individualized letters to all federally recognized tribes to explain the designation process for the 2010 $SO_2$ NAAQS, to provide the EPA designations guidance, and to offer consultation with the EPA. The EPA provided further information to tribes through presentations at the National Tribal Forum and through participation in National Tribal Air Association conference calls. The EPA also sent individualized letters to all federally recognized tribes that submitted recommendations to the EPA about the EPA's intended designations for the $SO_2$ standards and offered tribal leaders the opportunity for consultation. These communications provided opportunities for tribes to voice concerns to the EPA about the general designations process for the 2010 $SO_2$ NAAQS, as well as concerns specific to a tribe, and informed the EPA about key tribal concerns regarding designations as the rule was under development.

*G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

The action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not an economically significant regulatory action as defined in Executive Order 12866. While not subject to the Executive Order, this final action may be especially important for asthmatics, including asthmatic children, living in $SO_2$ nonattainment areas because respiratory effects in asthmatics are among the most sensitive health endpoints for $SO_2$ exposure. Because asthmatic children are considered a sensitive population, the EPA evaluated the potential health effects of exposure to $SO_2$ pollution among asthmatic children as part of the EPA's prior action establishing the 2010 $SO_2$ NAAQS. These effects and the size of the population affected are summarized in the EPA's final $SO_2$ NAAQS rules. *See http://www.epa.gov/ttn/naaqs/standards/so2/fr/20100622.pdf.*

*H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act (NTTAA)*

Section 12(d) of the NTTAA of 1995, Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impracticable. VCS are technical standards (e.g., materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by VCS bodies. The NTTAA directs the EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable VCS.

This action does not involve technical standards. Therefore, the EPA did not consider the use of any VCS.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 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 U.S.

The CAA requires that the EPA designate as nonattainment ''any area that does not meet (or that contributes to ambient air quality in a nearby area that does not meet) the national primary or secondary ambient air quality standard for the pollutant.'' By designating as nonattainment areas where available information indicate a violation of the 2010 $SO_2$ NAAQS or a contribution to a nearby violation, this action protects all those residing, working, attending school, or otherwise present in those areas regardless of minority or economic status.

The EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population.

*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 U.S. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the U.S. prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective October 4, 2013.

*L. Judicial Review*

Section 307(b)(1) of the CAA indicates which Federal Courts of Appeal have venue for petitions of review of final actions by the EPA. This section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit: (i) When the agency action consists of ''nationally applicable regulations promulgated, or final actions taken, by the Administrator,'' or (ii) when such action is locally or regionally applicable, if ''such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.''

This final action designating areas for the 2010 $SO_2$ NAAQS is ''nationally applicable'' within the meaning of section 307(b)(1). This final action establishes designations for areas across the U.S. for the 2010 $SO_2$ NAAQS. At the core of this final action is the EPA's interpretation of the definition of nonattainment under section 107(d)(1) of the CAA, and its application of that interpretation to areas across the country. For the same reasons, the Administrator also is determining that the final designations are of nationwide scope and effect for the purposes of section 307(b)(1). This is particularly appropriate because, in the report on the 1977 Amendments that revised section 307(b)(1) of the CAA, Congress noted that the Administrator's determination that an action is of ''nationwide scope or effect'' would be appropriate for any action that has a scope or effect beyond a single judicial circuit. H.R. Rep. No. 95–294 at 323, 324, *reprinted* in 1977 U.S.C.C.A.N. 1402–03. Here, the scope and effect of this final action extends to numerous judicial circuits since the designations apply to areas across the country. In these circumstances, section 307(b)(1) and its legislative history calls for the Administrator to find the action to be of ''nationwide scope or effect'' and for venue to be in the DC Circuit.

Thus, any petitions for review of final designations must be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date final action is published in the **Federal Register**.

**List of Subjects in 40 CFR Part 81**

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

Dated: July 25, 2013.

**Gina McCarthy,**

*EPA Administrator.*

For the reasons set forth in the preamble, 40 CFR part 81 is amended as follows:

## PART 81—DESIGNATIONS OF AREAS FOR AIR QUALITY PLANNING PURPOSES

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

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

### Subpart C—Section 107 Attainment Status Designations

**§ 81.301 [Amended]**

■ 2. Section 81.301 is amended by revising the table heading for ''Alabama—Sulfur Dioxide'' to read ''Alabama—1971 Sulfur Dioxide NAAQS (Primary and Secondary)''.

**§ 81.302 [Amended]**

■ 3. Section 81.302 is amended by revising the table heading for ''Alaska—$SO_2$'' to read ''Alaska—1971 Sulfur Dioxide NAAQS (Primary and Secondary)''.

■ 4. Section 81.303 is amended as follows:

■ a. By revising the table heading for ''Arizona—$SO_2$'' to read ''Arizona—1971 Sulfur Dioxide NAAQS (Primary and Secondary)''; and

■ b. By adding a new table entitled ''Arizona—2010 Sulfur Dioxide NAAQS (Primary)'' following the newly designated table ''Arizona—1971 Sulfur Dioxide NAAQS (Primary and Secondary)'' to read as follows:

**§ 81.303 Arizona.**

* * * * *

ARIZONA—2010 SULFUR DIOXIDE NAAQS (PRIMARY)

| Designated area | Designation | |
|---|---|---|
| | Date | Type |
| Hayden, AZ [1] | 10–4–13 | Nonattainment. |
| Gila County (part) | | |
| The portions of Gila County that are bounded by: T4S, R14E; T4S, R15E; T4S, R16E; T5S, R15E; T5S, R16E | | |
| Pinal County (part) | | |

ARIZONA—2010 SULFUR DIOXIDE NAAQS (PRIMARY)—Continued

| Designated area | Designation | |
|---|---|---|
| | Date | Type |
| The portions of Pinal County that are bounded by: T4S, R14E; T4S, R15E; T4S, R16E; T5S, R14E; T5S, R15E; T5S, R16E; T6S, R14E; T6S, R15E; T6S, R16E | | |
| Miami, AZ [1] | 10–4–13 | Nonattainment. |
| Gila County (part) | | |
| The portions of Gila County that are bounded by: T2N, R14E; T2N, R15E; T1N, R13E; T1N, R14E; T1N, R15E; T1S, R14E; T1S, R14 1/2E; T1S, R15E | | |

[1] Excludes Indian country located in each area, if any, unless otherwise specified.

* * * * *

**§ 81.304 [Amended]**

■ 5. Section 81.304 is amended by revising the table heading for ''Arkansas—$SO_2$'' to read ''Arkansas—1971 Sulfur Dioxide NAAQS (Primary and Secondary)''.

**§ 81.305 [Amended]**

■ 6. Section 81.305 is amended by revising the table heading for ''California—$SO_2$'' to read ''California—1971 Sulfur Dioxide NAAQS (Primary and Secondary)''.

**§ 81.306 [Amended]**

■ 7. Section 81.306 is amended by revising the table heading for ''Colorado—$SO_2$'' to read ''Colorado—1971 Sulfur Dioxide NAAQS (Primary and Secondary)''.

**§ 81.307 [Amended]**

■ 8. Section 81.307 is amended by revising the table heading for ''Connecticut—$SO_2$'' to read ''Connecticut—1971 Sulfur Dioxide NAAQS (Primary and Secondary)''.

**§ 81.308 [Amended]**

■ 9. Section 81.308 is amended by revising the table heading for ''Delaware—$SO_2$'' to read ''Delaware—1971 Sulfur Dioxide NAAQS (Primary and Secondary)''.

**§ 81.309 [Amended]**

■ 10. Section 81.309 is amended by revising the table heading for ''District of Columbia—$SO_2$'' to read ''District of Columbia—1971 Sulfur Dioxide NAAQS (Primary and Secondary)''.

■ 11. Section 81.310 is amended as follows:

■ a. By revising the table heading for ''Florida—$SO_2$'' to read ''Florida—1971 Sulfur Dioxide NAAQS (Primary and Secondary)''; and

■ b. By adding a new table entitled ''Florida—2010 Sulfur Dioxide NAAQS (Primary)'' following the newly designated table ''Florida—1971 Sulfur Dioxide NAAQS (Primary and Secondary)'' to read as follows:

**§ 81.310 Florida.**

* * * * *

FLORIDA—2010 SULFUR DIOXIDE NAAQS (PRIMARY)

| Designated area | Designation | |
|---|---|---|
| | Date | Type |
| Hillsborough County, FL [1] | 10–4–13 | Nonattainment. |
| Hillsborough County (part) | | |
| That portion of Hillsborough County encompassed by the polygon with the vertices using Universal Traverse Mercator (UTM) coordinates in UTM zone 17 with datum NAD83 as follows: (1) vertices—UTM Easting (m) 35881, UTM Northing 3076066; (2) vertices—UTM Easting (m) 355673, UTM Northing 3079275; (3) UTM Easting (m) 360300, UTM Northing 3086380; (4) vertices—UTM Easting (m) 366850, UTM Northing 3086692; (5) vertices—UTM Easting (m) 368364, UTM Northing 3083760; and (6) vertices—UTM Easting (m) 365708, UTM Northing 3079121 | | |
| Nassau County, FL [1] | 10–4–13 | Nonattainment. |
| Nassau County, (part) | | |
| That portion of Nassau County encompassing the circular boundary with the center being UTM Easting 455530 meters, UTM Northing 3391737 meters, UTM zone 17, using the NAD83 datum (the location of the violating ambient monitor) and the radius being 2.4 kilometers | | |

[1] Excludes Indian country located in each area, if any, unless otherwise specified.

* * * * *

**§ 81.311 [Amended]**

■ 12. Section 81.311 is amended by revising the table heading for ''Georgia—$SO_2$'' to read ''Georgia—1971 Sulfur Dioxide NAAQS (Primary and Secondary)''.

**§ 81.312 [Amended]**

■ 13. Section 81.312 is amended by revising the table heading for ''Hawaii—$SO_2$'' to read ''Hawaii—1971 Sulfur Dioxide NAAQS (Primary and Secondary)''.

**§ 81.313 [Amended]**

■ 14. Section 81.313 is amended by revising the table heading for ''Idaho—$SO_2$'' to read ''Idaho—1971 Sulfur Dioxide NAAQS (Primary and Secondary)''.

■ 15. Section 81.314 is amended as follows:

■ a. By revising the table heading for ''Illinois—$SO_2$'' to read ''Illinois—1971 Sulfur Dioxide NAAQS (Primary and Secondary)''; and

■ b. By adding a new table entitled ''Illinois—2010 Sulfur Dioxide NAAQS

(Primary)'' following the newly designated table ''Illinois—1971 Sulfur Dioxide NAAQS (Primary and Secondary)'' to read as follows:

**§ 81.314 Illinois.**

* * * * *

ILLINOIS—2010 SULFUR DIOXIDE NAAQS (PRIMARY)

| Designated area | Designation | |
|---|---|---|
| | Date | Type |
| Lemont, IL [1] | 10–4–13 | Nonattainment. |
| Cook County (part) | | |
| Lemont Township | | |
| Will County (part) | | |
| DuPage Township and Lockport Township | | |
| Pekin, IL [1] | 10–4–13 | Nonattainment. |
| Tazewell County (part) | | |
| Cincinnati Township and Pekin Township | | |
| Peoria County (part) | | |
| Hollis Township | | |

[1] Excludes Indian country located in each area, if any, unless otherwise specified.

* * * * *

■ 16. Section 81.315 is amended as follows:

■ a. By revising the table heading for ''Indiana—$SO_2$'' to read ''Indiana—1971 Sulfur Dioxide NAAQS (Primary and Secondary)''; and

■ b. By adding a new table entitled ''Indiana—2010 Sulfur Dioxide NAAQS (Primary)'' following the newly designated table ''Indiana—1971 Sulfur Dioxide NAAQS (Primary and Secondary)'' to read as follows:

**§ 81.315 Indiana.**

* * * * *

INDIANA—2010 SULFUR DIOXIDE NAAQS (PRIMARY)

| Designated area | Designation | |
|---|---|---|
| | Date | Type |
| Indianapolis, IN [1] | 10–4–13 | Nonattainment. |
| Marion County (part) | | |
| Wayne Township, Center Township, Perry Township | | |
| Morgan County, IN [1] | 10–4–13 | Nonattainment. |
| Morgan County (part) | | |
| Clay Township, Washington Township | | |
| Southwest Indiana, IN [1] | 10–4–13 | Nonattainment. |
| Daviess County (part) | | |
| Veale Township | | |
| Pike County (part) | | |
| Washington Township | | |
| Terre Haute, IN [1] | 10–4–13 | Nonattainment. |
| Vigo County (part) | | |
| Fayette Township, Harrison Township | | |

[1] Excludes Indian country located in each area, if any, unless otherwise specified.

* * * * *

■ 17. Section 81.316 is amended as follows:

■ a. By revising the table heading for ''Iowa—$SO_2$'' to read ''Iowa—1971 Sulfur Dioxide NAAQS (Primary and Secondary)''; and

■ b. By adding a new table entitled ''Iowa—2010 Sulfur Dioxide NAAQS (Primary)'' following the newly designated table ''Iowa—1971 Sulfur Dioxide NAAQS (Primary and Secondary)'' to read as follows:

**§ 81.316 Iowa.**

* * * * *

IOWA—2010 SULFUR DIOXIDE NAAQS (PRIMARY)

| Designated area | Designation | |
|---|---|---|
| | Date | Type |
| Muscatine, IA [1] | 10–4–13 | Nonattainment. |
| Muscatine County (part) | | |
| Sections 1–3, 10–15, 22–27, 34–36 of T77N, R3W (Lake Township) | | |
| Sections 1–3, 10–15, 22–27, 34–36 of T76N, R3W (Seventy-six Township) | | |
| T77N, R2W (Bloomington Township). | | |
| T76N, R2W (Fruitland Township) | | |
| All sections except 1, 12, 13, 24, 25, 36 of T77N, R1W (Sweetland Township) | | |

[1] Excludes Indian country located in each area, if any, unless otherwise specified.

* * * * *

**§ 81.317 [Amended]**

■ 18. Section 81.317 is amended by revising the table heading for ''Kansas—$SO_2$'' to read ''Kansas—1971 Sulfur Dioxide NAAQS (Primary and Secondary)''.

■ 19. Section 81.318 is amended as follows:

■ a. By revising the table heading for ''Kentucky—$SO_2$'' to read ''Kentucky—1971 Sulfur Dioxide NAAQS (Primary and Secondary)''; and

■ b. By adding a new table entitled ''Kentucky—2010 Sulfur Dioxide NAAQS (Primary)'' following the newly designated table ''Kentucky—1971 Sulfur Dioxide NAAQS (Primary and Secondary)'' to read as follows:

**§ 81.318 Kentucky.**

* * * * *

KENTUCKY—2010 SULFUR DIOXIDE NAAQS (PRIMARY)

| Designated area | Designation | |
|---|---|---|
| | Date | Type |
| Campbell-Clermont Counties, KY–OH [1] | 10–4–13 | Nonattainment. |
| Campbell County (part) | | |
| That portion of Campbell County which lies south and west of the Ohio River described as follows: Beginning at geographic coordinates 38.9735 North Latitude, 84.3017 West Longitude (NAD 1983) on the edge of the Ohio River running southwesterly to KY Highway 1566; thence continuing running southwesterly along KY Highway 1566 to KY Highway 9 (AA Highway); thence running north westerly along KY Highway 9 (AA Highway) from Hwy 1566 to Interstate 275; thence running northeasterly along Interstate 275 to Highway 2345 (John's Hill Road), Hwy 2345 to US–27, US–27 to I–275, I–275 to the Ohio River; thence running southeasterly along the Ohio River from Interstate 275 to geographic coordinates 38.9735 North Latitude, 84.3017 West Longitude (NAD 1983) | | |
| Jefferson County, KY [1] | 10–4–13 | Nonattainment. |
| Jefferson County (part) | | |
| That portion of Jefferson County compassed by the polygon with the vertices using Universal Traverse Mercator (UTM) coordinates in UTM zone 16 with datum NAD83 as follows: | | |
| (1) Ethan Allen Way extended to the Ohio River at UTM Easting (m) 595738, UTM Northing 4214086 and Dixie Highway (US60 and US31W) at UTM Easting (m) 59751, UTM Northing 4212946; | | |
| (2) Along Dixie Highway from UTM Easting (m) 597515, UTM Northing 4212946 to UTM Easting (m) 595859, UTM Northing 4210678; | | |
| (3) Near the adjacent property lines of Louisville Gas and Electric—Mill Creek Electric Generating Station and Kosmos Cement where they join Dixie Highway at UTM Easting (m) 595859, UTM Northing 4210678 and the Ohio River at UTM Easting (m) 595326, UTM Northing 4211014; | | |
| (4) Along the Ohio River from UTM Easting (m) 595326, UTM Northing 4211014 to UTM Easting (m) 595738, UTM Northing 4214086 | | |

[1] Excludes Indian country located in each area, if any, unless otherwise specified.

* * * * *

■ 20. Section 81.319 is amended as follows:

■ a. By revising the table heading for ''Louisiana—$SO_2$'' to read ''Louisiana—1971 Sulfur Dioxide NAAQS (Primary and Secondary)''; and

■ b. By adding a new table entitled ''Louisiana—2010 Sulfur Dioxide NAAQS (Primary)'' following the newly designated table ''Louisiana—1971 Sulfur Dioxide NAAQS (Primary and Secondary)'' to read as follows:

**§ 81.319 Louisiana.**

* * * * *

LOUISIANA—2010 SULFUR DIOXIDE NAAQS (PRIMARY)

| Designated area | Designation | |
|---|---|---|
| | Date | Type |
| St. Bernard Parish, LA [1] | 10–4–13 | Nonattainment. |
| St. Bernard Parish | | |

[1] Excludes Indian country located in each area, if any, unless otherwise specified.

* * * * *

**§ 81.320 [Amended]**

■ 21. Section 81.320 is amended by revising the table heading for ''Maine—$SO_2$'' to read ''Maine—1971 Sulfur Dioxide NAAQS (Primary and Secondary)''.

**§ 81.321 [Amended]**

■ 22. Section 81.321 is amended by revising the table heading for ''Maryland—$SO_2$'' to read ''Maryland—1971 Sulfur Dioxide NAAQS (Primary and Secondary)''.

**§ 81.322 [Amended]**

■ 23. Section 81.322 is amended by revising the table heading for ''Massachusetts—$SO_2$'' to read ''Massachusetts—1971 Sulfur Dioxide NAAQS (Primary and Secondary)''.

■ 24. Section 81.323 is amended as follows:

■ a. By revising the table heading for ''Michigan—$SO_2$'' to read ''Michigan—1971 Sulfur Dioxide NAAQS (Primary and Secondary)''; and

■ b. By adding a new table entitled ''Michigan—2010 Sulfur Dioxide NAAQS (Primary)'' following the newly designated table ''Michigan—1971 Sulfur Dioxide NAAQS (Primary and Secondary)'' to read as follows:

**§ 81.323 Michigan.**

* * * * *

MICHIGAN—2010 SULFUR DIOXIDE NAAQS (PRIMARY)

| Designated area | Designation | |
|---|---|---|
| | Date | Type |
| Detroit, MI [1] Wayne County (part) | 10–4–13 | Nonattainment. |
| The area bounded on the east by the Michigan-Ontario border, on the south by the Wayne County-Monroe County border, on the west by Interstate 75 north to Southfield Road, Southfield Road to Interstate 94, and Interstate 94 north to Michigan Avenue, and on the north by Michigan Avenue to Woodward Avenue and a line on Woodward Avenue extended to the Michigan-Ontario border | | |

[1] Excludes Indian country located in each area, if any, unless otherwise specified.

* * * * *

**§ 81.324 [Amended]**

■ 25. Section 81.324 is amended by revising the table heading for ''Minnesota—$SO_2$'' to read ''Minnesota—1971 Sulfur Dioxide NAAQS (Primary and Secondary)''.

**§ 81.325 [Amended]**

■ 26. Section 81.325 is amended by revising the table heading for ''Mississippi—$SO_2$'' to read ''Mississippi—1971 Sulfur Dioxide NAAQS (Primary and Secondary)''.

■ 27. Section 81.326 is amended as follows:

■ a. By revising the table heading for ''Missouri—$SO_2$'' to read ''Missouri—1971 Sulfur Dioxide NAAQS (Primary and Secondary)''; and

■ b. By adding a new table entitled ''Missouri—2010 Sulfur Dioxide NAAQS (Primary)'' following the newly designated table ''Missouri—1971 Sulfur Dioxide NAAQS (Primary and Secondary)'' to read as follows:

**§ 81.326 Missouri.**

* * * * *

MISSOURI—2010 SULFUR DIOXIDE NAAQS (PRIMARY)

| Designated area | Designation | |
|---|---|---|
| | Date | Type |
| Jackson County, MO [1] Jackson County (part) | 10–4–13 | Nonattainment. |
| The portion of Jackson County bounded by I–70/I–670 and the Missouri River to the north; and, to the west of I–435 to the state line separating Missouri and Kansas | | |
| Jefferson County, MO [1] Jefferson County (part) | 10–4–13 | Nonattainment. |
| That portion within Jefferson County described by connecting the following four sets of UTM coordinates moving in a clockwise manner: | | |
| (Herculaneum USGS Quadrangle) | | |
| 718360.283 4250477.056 | | |
| 729301.869 4250718.415 | | |
| 729704.134 4236840.30 | | |
| 718762.547 4236558.715 | | |
| (Festus USGS Quadrangle) | | |
| 718762.547 4236558.715 | | |
| 729704.134 4236840.30 | | |
| 730066.171 4223042.637 | | |
| 719124.585 4222680.6 | | |
| (Selma USGS Quadrangle) | | |
| 729704.134 4236840.30 | | |
| 730428.209 4236840.3 | | |
| 741047.984 4223283.996 | | |
| 730066.171 4223042.637 | | |
| (Valmeyer USGS Quadrangle) | | |
| 729301.869 4250718.415 | | |
| 731474.096 4250798.868 | | |
| 730428.209 4236840.3 | | |
| 729704.134 4236840.30 | | |

[1] Excludes Indian country located in each area, if any, unless otherwise specified.

* * * * *

■ 28. Section 81.327 is amended as follows:

■ a. By revising the table heading for ''Montana—$SO_2$'' to read ''Montana—1971 Sulfur Dioxide NAAQS (Primary and Secondary)''; and

■ b. By adding a new table entitled ''Montana—2010 Sulfur Dioxide NAAQS (Primary)'' following the newly designated table ''Montana—1971 Sulfur Dioxide NAAQS (Primary and Secondary)'' to read as follows:

**§ 81.327 Montana.**

* * * * *

MONTANA—2010 SULFUR DIOXIDE NAAQS (PRIMARY)

| Designated area | Designation | |
|---|---|---|
| | Date | Type |
| Billings, MT [1] | | |
| Yellowstone County (part) | 10–4–13 | Nonattainment. |
| The area originates at the point defined as the southwest corner of Section 11, Township 1S, Range 26E. From that point the boundary proceeds north along the western section line of Section 11 to the point of intersection with the midline of Interstate Highway 90. From that point the boundary follows the midline of Interstate Highway 90, across the Yellowstone River, to the point where the highway midline intersects the northern boundary of Section 35, Township 1N, Range 26E. From that point the boundary proceeds east along the northern section line of Sections 35 and 36 to the point where Old US 87/Hardin Road leaves the section line and turns southeast. The boundary follows the midline of Old US 87/Hardin Road southeast to the point where the road intersects the western boundary of the SE ¼ of the SE ¼ of Section 31, Township 1N, Range 27E. From that point the boundary proceeds south along the ¼ section line to the southern boundary of Township 1N, then east to the northeast corner of Section 5, Township 1S, Range 27E. The boundary then proceeds south along the eastern section line of sections 5 and 8 to the southeast corner of Section 8, Township 1S, Range 27E, where it turns west and follows the south section line of Sections 8 and 7, Township 1S, Range 27E; and Sections 12 and 11, Township 1S, Range 26E, back to the point of origin | | |

[1] Excludes Indian country located in each area, if any, unless otherwise specified.

* * * * *

**§ 81.328 [Amended]**

■ 29. Section 81.328 is amended by revising the table heading for ''Nebraska—$SO_2$'' to read ''Nebraska—1971 Sulfur Dioxide NAAQS (Primary and Secondary)''.

■ 30. Section 81.329 is amended by revising the table heading for ''Nevada—$SO_2$'' to read ''Nevada—1971 Sulfur Dioxide NAAQS (Primary and Secondary)''.

■ 31. Section 81.330 is amended as follows:

■ a. By revising the table heading for ''New Hampshire—$SO_2$'' to read ''New Hampshire—1971 Sulfur Dioxide NAAQS (Primary and Secondary)''; and

■ b. By adding a new table entitled ''New Hampshire—2010 Sulfur Dioxide NAAQS (Primary)'' following the newly designated table ''New Hampshire—1971 Sulfur Dioxide NAAQS (Primary and Secondary)'' to read as follows:

**§ 81.330 New Hampshire.**

* * * * *

NEW HAMPSHIRE—2010 SULFUR DIOXIDE NAAQS (PRIMARY)

| Designated area | Designation | |
|---|---|---|
| | Date | Type |
| Central New Hampshire, NH [1] | | |
| Hillsborough County (part) | 10–4–13 | Nonattainment. |
| Goffstown Town | | |
| Merrimack County (part) | | |
| Allenstown Town, Bow Town, Chichester Town, Dunbarton Town, Epsom Town, Hooksett Town, Loudon Town, Pembroke Town, Pittsfield Town, City of Concord | | |
| Rockingham County (part) | | |
| Candia Town, Deerfield Town, Northwood Town | | |

[1] Excludes Indian country located in each area, if any, unless otherwise specified.

* * * * *

**§ 81.331 [Amended]**

■ 32. Section 81.331 is amended by revising the table heading for ''New Jersey—$SO_2$'' to read ''New Jersey—1971 Sulfur Dioxide NAAQS (Primary and Secondary)''.

**§ 81.332 [Amended]**

■ 33. Section 81.332 is amended by revising the table heading for ''New Mexico—$SO_2$'' to read ''New Mexico—1971 Sulfur Dioxide NAAQS (Primary and Secondary)''.

**§ 81.333 [Amended]**

■ 34. Section 81.333 is amended by revising the table heading for ''New York—$SO_2$'' to read ''New York—1971 Sulfur Dioxide NAAQS (Primary and Secondary)''.

**§ 81.334 [Amended]**

■ 35. Section 81.334 is amended by revising the table heading for ''North Carolina—$SO_2$'' to read ''North Carolina—1971 Sulfur Dioxide NAAQS (Primary and Secondary)''.

**§ 81.335 [Amended]**

■ 36. Section 81.335 is amended by revising the table heading for ''North Dakota—$SO_2$'' to read ''North Dakota—1971 Sulfur Dioxide NAAQS (Primary and Secondary)''.

■ 37. Section 81.336 is amended as follows:

■ a. By revising the table heading for ''Ohio—$SO_2$'' to read ''Ohio—1971 Sulfur Dioxide NAAQS (Primary and Secondary)''; and

■ b. By adding a new table entitled ''Ohio—2010 Sulfur Dioxide NAAQS (Primary)'' following the newly designated table ''Ohio—1971 Sulfur Dioxide NAAQS (Primary and Secondary)'' to read as follows:

**§ 81.336 Ohio.**

* * * * *

OHIO—2010 SULFUR DIOXIDE NAAQS (PRIMARY)

| Designated area | Designation | |
|---|---|---|
| | Date | Type |
| Campbell-Clermont Counties, KY–OH [1] | | |
| Clermont County (part) | 10–4–13 | Nonattainment. |
| Lake County, OH [1] | | |
| Lake County | 10–4–13 | Nonattainment. |
| Muskingum River, OH [1] | 10–4–13 | Nonattainment. |
| Morgan County (part) | | |
| Center Township | | |
| Washington County (part) | | |
| Waterford Township | | |
| Steubenville OH–WV[1] | | |
| Jefferson County (part) | 10–4–13 | Nonattainment. |
| Cross Creek Township, Steubenville Township, Warren Township, Wells Township, Steubenville City | | |

[1] Excludes Indian country located in each area, if any, unless otherwise specified.

* * * * *

**§ 81.337 [Amended]**

■ 38. Section 81.337 is amended by revising the table heading for ''Oklahoma—$SO_2$'' to read ''Oklahoma—1971 Sulfur Dioxide NAAQS (Primary and Secondary)''.

**§ 81.338 [Amended]**

■ 39. Section 81.338 is amended by revising the table heading for ''Oregon—$SO_2$'' to read ''Oregon—1971 Sulfur Dioxide NAAQS (Primary and Secondary)''.

■ 40. Section 81.339 is amended as follows:

■ a. By revising the table heading for ''Pennsylvania—$SO_2$'' to read ''Pennsylvania—1971 Sulfur Dioxide NAAQS (Primary and Secondary)''; and

■ b. By adding a new table entitled ''Pennsylvania—2010 Sulfur Dioxide NAAQS (Primary)'' following the newly designated table ''Pennsylvania—1971 Sulfur Dioxide NAAQS (Primary and Secondary)'' to read as follows:

**§ 81.339 Pennsylvania.**

* * * * *

PENNSYLVANIA—2010 SULFUR DIOXIDE NAAQS (PRIMARY)

| Designated area | Designation | |
|---|---|---|
| | Date | Type |
| Allegheny, PA [1] | | |
| Allegheny County (part) | 10–4–13 | Nonattainment. |
| The area consisting of: | | |
| Borough of Braddock | | |
| Borough of Dravosburg | | |
| Borough of East McKeesport | | |
| Borough of East Pittsburgh | | |
| Borough of Elizabeth | | |
| Borough of Glassport | | |
| Borough of Jefferson Hills | | |
| Borough of Liberty | | |
| Borough of Lincoln | | |
| Borough of North Braddock | | |
| Borough of Pleasant Hills | | |
| Borough of Port Vue | | |
| Borough of Versailles | | |
| Borough of Wall | | |
| Borough of West Elizabeth | | |
| Borough of West Mifflin | | |
| City of Clairton | | |
| City of Duquesne | | |
| City of McKeesport | | |
| Elizabeth Township | | |
| Forward Township | | |
| North Versailles Township | | |
| Beaver, PA [1] | | |
| Beaver County (part) | 10–4–13 | Nonattainment. |
| Area consisting of Industry Borough, Shippingport Borough, Midland Borough, Brighton Township, Potter Township and Vanport Township | | |
| Indiana, PA[1] | 10–4–13 | Nonattainment. |
| Indiana County | | |
| Armstrong County (part) | | |
| Area consisting of Plumcreek Township, South Bend Township, and Elderton Borough | | |
| Warren, PA [1] | | |

PENNSYLVANIA—2010 SULFUR DIOXIDE NAAQS (PRIMARY)—Continued

| Designated area | Designation | |
|---|---|---|
| | Date | Type |
| Warren County (part) ..... Area consisting of Conewango Township, Glade Township, Pleasant Township, and the City of Warren | 10–4–13 | Nonattainment |

[1] Excludes Indian country located in each area, if any, unless otherwise specified.

* * * * *

**§ 81.340 [Amended]**

■ 41. Section 81.340 is amended by revising the table heading for ''Rhode Island—$SO_2$'' to read ''Rhode Island—1971 Sulfur Dioxide NAAQS (Primary and Secondary)''.

**§ 81.341 [Amended]**

■ 42. Section 81.341 is amended by revising the table heading for ''South Carolina—$SO_2$'' to read ''South Carolina—1971 Sulfur Dioxide NAAQS (Primary and Secondary)''.

**§ 81.342 [Amended]**

■ 43. Section 81.342 is amended by revising the table heading for ''South Dakota—$SO_2$'' to read ''South Dakota—1971 Sulfur Dioxide NAAQS (Primary and Secondary)''.

■ 44. Section 81.343 is amended as follows:

■ a. By revising the table heading for ''Tennessee—$SO_2$'' to read ''Tennessee—1971 Sulfur Dioxide NAAQS (Primary and Secondary)''; and

■ b. By adding a new table entitled ''Tennessee—2010 Sulfur Dioxide NAAQS (Primary)'' following the newly designated table ''Tennessee—1971 Sulfur Dioxide NAAQS (Primary and Secondary)'' to read as follows:

**§ 81.343 Tennessee.**

* * * * *

TENNESSEE—2010 SULFUR DIOXIDE NAAQS (PRIMARY)

| Designated area | Designation | |
|---|---|---|
| | Date | Type |
| Sullivan County, TN [1] | | |
| Sullivan County (part) ..... That portion of Sullivan County encompassing a circle having its center at the B–253 power house coordinates 36.5186 N; 82.5350 W and having a 3-kilometer radius | 10–4–13 | Nonattainment. |

[1] Excludes Indian country located in each area, if any, unless otherwise specified.

* * * * *

**§ 81.344 [Amended]**

■ 45. Section 81.344 is amended by revising the table heading for ''Texas—$SO_2$'' to read ''Texas—1971 Sulfur Dioxide NAAQS (Primary and Secondary)''.

**§ 81.345 [Amended]**

■ 46. Section 81.345 is amended by revising the table heading for ''Utah—$SO_2$'' to read ''Utah—1971 Sulfur Dioxide NAAQS (Primary and Secondary)''.

**§ 81.346 [Amended]**

■ 47. Section 81.346 is amended by revising the table heading for ''Vermont—$SO_2$'' to read ''Vermont—1971 Sulfur Dioxide NAAQS (Primary and Secondary)''.

**§ 81.347 [Amended]**

■ 48. Section 81.347 is amended by revising the table heading for ''Virginia—$SO_2$'' to read ''Virginia—1971 Sulfur Dioxide NAAQS (Primary and Secondary)''.

**§ 81.348 [Amended]**

■ 49. Section 81.348 is amended by revising the table heading for ''Washington—$SO_2$'' to read ''Washington—1971 Sulfur Dioxide NAAQS (Primary and Secondary)''.

■ 50. Section 81.349 is amended as follows:

■ a. By revising the table heading for ''West Virginia—$SO_2$'' to read ''West Virginia—1971 Sulfur Dioxide NAAQS (Primary and Secondary)''; and

■ b. By adding a new table entitled ''West Virginia—2010 Sulfur Dioxide NAAQS (Primary)'' following the newly designated table ''West Virginia—1971 Sulfur Dioxide NAAQS (Primary and Secondary)'' to read as follows:

**§ 81.349 West Virginia.**

* * * * *

WEST VIRGINIA—2010 SULFUR DIOXIDE NAAQS (PRIMARY)

| Designated area | Designation | |
|---|---|---|
| | Date | Type |
| Steubenville, OH–WV [1] | | |
| Brooke County (part) ..... Area bounded by the Cross Creek Tax District | 10–4–13 | Nonattainment. |
| Marshall, WV [1] | | |
| Marshall County (part) ..... Area consisting of Clay Tax district, Franklin Tax District, and Washington Tax District | 10–4–13 | Nonattainment. |

[1] Excludes Indian country located in each area, if any, unless otherwise specified.

* * * * *

■ 51. Section 81.350 is amended as follows:

■ a. By revising the table heading for ''Wisconsin—$SO_2$'' to read ''Wisconsin—1971 Sulfur Dioxide NAAQS (Primary and Secondary)''; and

■ b. By adding a new table entitled ''Wisconsin—2010 Sulfur Dioxide NAAQS (Primary)'' following the newly designated table ''Wisconsin—1971 Sulfur Dioxide NAAQS (Primary and Secondary)'' to read as follows:

**§ 81.350 Wisconsin.**

* * * * *

WISCONSIN—2010 SULFUR DIOXIDE NAAQS (PRIMARY)

| Designated area | Designation | |
|---|---|---|
| | Date | Type |
| Rhinelander, WI[1] | | |
| Oneida County (part) | 10–4–13 | Nonattainment. |
| City of Rhinelander, Crescent Town, Newbold Town, Pine Lake Town, and Pelican Town | | |

[1] Excludes Indian country located in each area, if any, unless otherwise specified.

* * * * *

**§ 81.351 [Amended]**

■ 52. Section 81.351 is amended by revising the table heading for ''Wyoming—$SO_2$'' to read ''Wyoming—1971 Sulfur Dioxide NAAQS (Primary and Secondary)''.

**§ 81.352 [Amended]**

■ 53. Section 81.352 is amended by revising the table heading for ''American Samoa—$SO_2$'' to read ''American Samoa—1971 Sulfur Dioxide NAAQS (Primary and Secondary)''.

**§ 81.353 [Amended]**

■ 54. Section 81.353 is amended by revising the table heading for ''Guam—$SO_2$'' to read ''Guam—1971 Sulfur Dioxide NAAQS (Primary and Secondary)''.

**§ 81.354 [Amended]**

■ 55. Section 81.354 is amended by revising the table heading for ''Northern Mariana Islands—$SO_2$'' to read ''Northern Mariana Islands—1971 Sulfur Dioxide NAAQS (Primary and Secondary)''.

**§ 81.355 [Amended]**

■ 56. Section 81.355 is amended by revising the table heading for ''Puerto Rico—$SO_2$'' to read ''Puerto Rico—1971 Sulfur Dioxide NAAQS (Primary and Secondary)''.

**§ 81.356 [Amended]**

■ 57. Section 81.356 is amended by revising the table heading for ''Virgin Islands—$SO_2$'' to read ''Virgin Islands—1971 Sulfur Dioxide NAAQS (Primary and Secondary)''.

[FR Doc. 2013–18835 Filed 8–2–13; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 300

**[EPA–HQ–SFUND–2000–0003; FRL 9842–7]**

## National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Direct Deletion of the Imperial Refining Company Superfund Site

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) Region 6 is publishing a direct final Notice of Deletion of the Imperial Refining Co. Superfund Site located in Ardmore, Carter County, Oklahoma, from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final deletion is being published by EPA with the concurrence of the State of Oklahoma, through the Oklahoma Department of Environmental Quality (ODEQ), because EPA has determined that all appropriate response actions under CERCLA, other than operation, maintenance, and five-year reviews have been completed. However, this deletion does not preclude future actions under Superfund.

**DATES:** This direct final deletion is effective September 19, 2013 unless EPA receives adverse comments by September 4, 2013. If adverse comments are received, EPA will publish a timely withdrawal of the direct final deletion in the **Federal Register** informing the public that the deletion will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–SFUND–2000–0003, by one of the following methods:

- *http://www.regulations.gov:* Follow internet on-line instructions for submitting comments.
- *Email:* Brian W. Mueller, *mueller.brian@epa.gov.*
- *Fax:* 214–665–6660.
- *Mail:* Brian W. Mueller; U.S. Environmental Protection Agency, Region 6; Superfund Division (6SF–RA); 1445 Ross Avenue, Suite 1200; Dallas, Texas 75202–7167.
- *Hand delivery:* U.S. Environmental Protection Agency, Region 6; 1445 Ross Avenue, Suite 700; Dallas, Texas 75202–2733; Contact: Brian W. Mueller (214) 665–7167. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–HQ–AFUND–2000–0003. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and

made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the *http://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 *http://www.regulations.gov* or in hard copy at:

- U.S. Environmental Protection Agency, Region 6; 1445 Ross Avenue, Suite 700; Dallas, Texas 75202–2733; hours of operation: Monday through Friday, 9:00 a.m. to 12:00 p.m. and 1:00 p.m. to 4:00 p.m.. Contact: Brian W. Mueller (214) 665–7167.
- Ardmore Public Library; 320 E. Street NW.; Ardmore, Oklahoma 73401; Hours of Operation: Monday through Thursday 10:00 a.m. until 8:30 p.m.; Friday through Saturday, 10:00 a.m. until 4:00 p.m.; Sunday 1:00 p.m. until 5:00 p.m.
- Oklahoma Department of Environmental Quality; 707 N. Robinson, 2nd floor: Oklahoma City, Oklahoma 73102; Hours of operation: Monday through Friday 8:00 a.m. until 4:30 p.m.

**FOR FURTHER INFORMATION CONTACT:**

Brian W. Mueller, Remedial Project Manager; U.S. Environmental Protection Agency, Region 6; Superfund Division (6SF–RL); 1445 Ross Avenue, Suite 1200; Dallas, Texas 75202–2733, (214) 665–7167; email: *mueller.brian@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Site Deletion
V. Deletion Action

## I. Introduction

EPA Region 6 is publishing this direct final Notice of Deletion of the Imperial Refining Co. Superfund Site (Site), from the National Priorities List (NPL). The NPL constitutes Appendix B of 40 CFR part 300 which is the Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). As described in 300.425(e)(3) of the NCP, sites deleted from the NPL remains eligible for Fund-financed remedial action if future conditions warrant such actions.

Because EPA considers this action to be noncontroversial and routine, this action will be effective September 19, 2013 unless EPA receives adverse comments by September 4, 2013. Along with this direct final Notice of Deletion, EPA is co-publishing a Notice of Intent for Deletion in the ''Proposed Rules'' section of the **Federal Register**. If adverse comments are received within the 30-day public comment period on this deletion action, EPA will publish a timely withdrawal of this direct final Notice of Deletion before the effective date of the deletion and the deletion will not take effect. EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent for Deletion and the comments already received. There will be no additional opportunity to comment.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Imperial Refining Co. Superfund Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to delete the Site from the NPL unless adverse comments are received during the public comment period.

## II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the State, whether any of the following criteria have been met:

i. responsible parties or other persons have implemented all appropriate response actions required;

ii. all appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. the remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Pursuant to CERCLA section 121(c) and the NCP, EPA conducts five-year reviews to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at a site above levels that allow for unlimited use and unrestricted exposure. EPA conducts such five-year reviews even if a site is deleted from the NPL. EPA may initiate further action to ensure continued protectiveness at a deleted site if new information becomes available that indicates it is appropriate. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

## III. Deletion Procedures

The following procedures apply to the deletion of the Site:

(1) EPA has consulted with the state of Oklahoma prior to developing this direct final Notice of Deletion and the Notice of Intent for Deletion co-published in the ''Proposed Rules'' section of the **Federal Register**.

(2) EPA has provided the state 30 working days for review of this notice and the parallel Notice of Intent to Delete prior to their publication today, and the state, through the ODEQ, has concurred on this deletion of the Site from the NPL.

(3) Concurrently with the publication of this direct final Notice of Deletion, a notice of the availability of the parallel Notice of Intent for Deletion is being published in a major local newspaper, the *Daily Ardmoreite.* The newspaper announces the 30-day public comment period concerning the Notice of Intent for Deletion of the Site from the NPL.

(4) The EPA placed copies of documents supporting the deletion in the deletion docket and made these items available for public inspection and copying at the Site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this deletion action, EPA will publish a timely notice of withdrawal of this direct final Notice of Deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of

the Notice of Intent for Deletion and the comments already received.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for further response actions, should future conditions warrant such actions.

**IV. Basis for Site Deletion**

The following information provides EPA's rationale for deleting the Site from the NPL.

*Site Background and History*

The Imperial Refining Co. Superfund Site (CERCLIS ID OK0002024099) is the location of a former petroleum refinery that operated from 1917 to 1934 in Ardmore, Carter County, Oklahoma. The numerous tanks and most of the buildings that were present on the Site during the refinery's operation were dismantled between 1934 and 1948, leaving the property as mixed wooded areas and open fields. No records have been found that describe the types of activities that took place on the Site after 1934. Currently, the land is privately owned by the Hogan Family, L.L.C., and no commercial activities are taking place at the Site. The legal description for the property is SE ¼, NE ¼, Section 20, and SW ¼, NW ¼, Section 21, T4S, R2E, Indian Meridian, which is located within the northeastern portion of the City of Ardmore, Carter County, Oklahoma (Figure 1). The Site is divided into three parcels: the West (36.5 acres), East (14.5 acres) and East Railroad (21 acres). The Site covers approximately 72 acres and is bisected by U.S. Highway 142 and railroad tracks operated by the BNSF Railway Company. The adjacent property to the north and east of Hwy 142 is occupied by a facility that manufactures roofing shingles. Waste-water processing lagoons operated by Valero Refining are located west of the Site, and the rest of the immediately adjacent property is largely undeveloped.

The Imperial Refining Co. began operations at the Site in 1917. The eastern portion of the property was purchased in April 1917, and the western portion was purchased three months later. Imperial Refining Co. remained active for 17 years until it went bankrupt in 1934. Due to the absence of environmental regulations during the operational period, no permits, violations, inspections, or facility operation documentation have been identified, and no records have been found that describe the types of activities that took place on the Site. The ODEQ conducted a Preliminary Assessment in September 1997 and a Site Inspection (SI) in July 1998. During the SI and Removal Assessment, investigators noted 12 waste piles containing an asphalt-like material scattered throughout the property. Soil, sediment, waste pile, and surface water samples were collected. There were numerous pits, piles, and water impoundments contaminated with metals and polynuclear aromatic hydrocarbons (PAHs).

The waste material was found in 12 distinct piles across the Site, one vertical tank remnant, and one underground storage tank (UST). The average thickness of the waste piles was approximately 1foot (ft), and the benzo(a)pyrene concentrations range from 2.5 milligrams per kilogram (mg/kg) to 570 mg/kg. In addition to the waste material, surface soil (0–1 ft below ground surface) and sediment (0–1 ft below ground surface) had elevated concentrations of benzo(a)pyrene and arsenic. The soil concentrations ranged from 1 mg/kg to 90 mg/kg for arsenic and 0.04 mg/kg to 10.2 mg/kg for benzo(a)pyrene. The exposure routes of concern were direct contact and ingestion. Sediments in onsite intermittent drainages were indistinguishable from Site soils except by their location within drainages; therefore, the drainage sediments were considered soils for the remedial action. The sediment concentrations range from 4.7 mg/kg to 33.4 mg/kg for arsenic and 0.062 mg/kg to 1.3 mg/kg for benzo(a)pyrene.

Based on the results, ODEQ referred the property to the EPA for further action. EPA conducted a Removal Assessment in 1998 to determine the absence/presence of hazardous materials and the types and concentrations and a second Removal Assessment in 1999 to estimate waste pile volumes and evaluate disposal options. Based on these results, the Site was proposed to the NPL on May 11, 2000, (**Federal Register**: May 11, 2000 [Volume 65, No. 92, Page 30489–30495]) and was finalized on July 27, 2000 (**Federal Register**: July 27, 2000 [Volume 65, Number 145, Page 46096–46104)]). A Removal Action to install a perimeter fence to secure the Site was conducted by EPA from June 29, 2004 through July 23, 2004.

*Remedial Investigation and Feasibility Study*

The EPA and ODEQ negotiated a Cooperative Agreement under which the ODEQ was the lead agency for the Remedial Investigation/Feasibility Study (RI/FS) with EPA acting as the supporting agency. From early 2005 through early 2007, contractors for the ODEQ conducted a RI/FS including field sampling and investigation activities of soil, sediment, surface water, ground water, and animal tissue. The RI/FS identified the types, quantities, and locations of contaminants found in these samples and developed ways to address the contamination. A Human Health Risk Assessment and an Ecological Risk Assessment were performed to determine the current and future effects of contaminants on human health and the environment.

On-site contamination included waste material, soil and sediment. Arsenic and benzo(a)pyrene are the primary contaminants of concern. The primary sources of contaminants are waste in an underground storage tank and waste piles characterized as dry, asphalt-like material. The waste material is found throughout the Site, and the benzo(a)pyrene concentrations range from 2.5 mg/kg to 570 mg/kg. In addition to the waste material, surface soil (0–1 ft below ground surface) and sediment (0–1 ft below ground surface) have elevated concentrations of benzo(a)pyrene and arsenic. The soil concentrations range from 1 mg/kg to 90 mg/kg for arsenic and 0.04 mg/kg to 10.2 mg/kg for benzo(a)pyrene. Sediments in on-site intermittent drainages are indistinguishable from Site soils except by their location within drainages; therefore, the drainage sediments are considered soils for the remedial action as these remain dry most of the year.

*Selected Remedy*

A proposed plan for the Site was issued in September 2007, presenting the preferred alternative of excavation and offsite disposal for the waste, contaminated soil, and contaminated sediment at the Site. The Record of Decision (ROD) was signed on December 26, 2007. Remedial Action Objectives (RAOs) were developed for Site soil, sediment, and waste material.

*Remedial Action Objectives*

Surface Soil

- Prevent exposure to current and future human and ecological receptors through ingestion, dermal contact, and inhalation of contaminated soil containing arsenic and benzo(a)pyrene

concentrations in excess of 5E–05 and 2.5E–05 excess cancer risk, respectively.

Pond and Creek Sediment

- Prevent exposure to current and future human receptors through ingestion, dermal contact, and inhalation of contaminated sediment containing arsenic concentrations in excess of 5E–05 excess cancer risk.
- Prevent exposure to current and future ecological receptors through direct contact, food chain uptake, and incidental ingestion of contaminated sediment containing benzo(a)pyrene concentrations in excess of levels that are protective of ecological receptors.

Waste Material

- Prevent exposure to human and ecological receptors through ingestion and dermal contact.
- Prevent further migration of waste material contamination. In order to achieve these RAOs, numerical risk-based cleanup levels were established for each environmental medium based on the residential scenario.

*Response Actions*

The EPA began on-site Remedial Action construction on February 13, 2008. During remedial action, a total of approximately 105,993 cubic yards of waste/soil and sediment were removed from the Site and shipped to an offsite landfill. Excavated areas were backfilled, graded and seeded after confirmation sampling indicated that cleanup levels have been met. As excavation activities progressed, waste was found along the borders of the property, throughout the ponds, and surrounding a high pressure gas line. Excavation and removal of waste along the borders was not feasible, safe or practical due to its proximity to sloped areas supporting the highway, the rail line, and business property, as well as its depth under significant volumes of uncontaminated overburden.

*ROD Amendment*

A ROD amendment proposed plan for the Site was issued in November 2008, presenting an additional containment component to the remedy selected in the ROD in areas of the Site where excavation would be impracticable and potentially dangerous to the original excavation and offsite disposal remedy. On February 20, 2009, the EPA Superfund Division Director for Region 6 signed a ROD amendment.

Based on excavation activities and delineation pits throughout the east and west ponds, surface sediment exceeding the ecological cleanup numbers was completely removed. Due to the presence of 18 inches of uncontaminated overburden, the complete removal of surface sediment exceeding the ecological cleanup numbers, and the unknown locations at depth throughout the remaining areas of the ponds, no further excavation occurred in the ponds. Excavation in close proximity to the high pressure gas line was not recommended or considered safe; therefore, waste remains around the gas line within the easement boundaries.

The cleanup levels for the Site were reevaluated in the 2009 ROD Amendment. Because waste remains in-place, cleanup levels for the Site changed from residential to industrial land use. The soil cleanup level for benzo(a)pyrene changed to 5.27 mg/kg. The soil cleanup level is still in line with the latest toxicity toxicological benchmarks. The soil cleanup level for arsenic did not change, and no change was made to sediment cleanup levels. The Site is restricted to industrial use through the enforcement of institutional controls (ICs).

*Containment*

The 2009 ROD Amendment required the placement of a clay barrier over waste material left in place. The materials left in place are identified as non-hazardous waste and all data indicate that the leaching potential of this material is below regulatory limits for characteristic hazardous waste categories and land disposal restrictions. The backfill material is identified as clayey sand and is expected to have a low hydraulic conductivity (within the range of 1 x 10–3 centimeters per second to 1 x 10–5 centimeters per second). As such, backfill of the excavated areas and areas above the waste material eliminates the potential for direct contact, ingestion, and migration as well as provides for slope control, drainage control, and the establishment of vegetation.

All threats at the Site have been addressed through excavation and disposal of contaminated material, isolation and capping of non-hazardous materials, installation of fencing, posting of warning signs, and implementation of institutional controls. Remedial activities included:

- Transportation and disposal (at a permitted off-site waste disposal facility) of approximately 31,621 $yd^3$ of debris (non-hazardous debris, foundry sand, and slag) and the asbestos-containing material in the on-site building and scattered throughout the Site;
- Removal and disposal of an electrical transformer, and underground storage tank in the vicinity of MW–20 and Lead Area 1, and the management and disposal of foundry bag filters identified as a listed K061 waste material;
- Excavation and treatment (solidification/stabilization, if necessary) of approximately 13,600 $yd^3$ of soils with lead concentrations equal to or greater than 500 mg/kg to a maximum depth of 1.5 feet bgs and approximately 3,000 $yd^3$ of soils stockpiled at the Site from a previous removal action, and transportation and disposal (at a permitted off-site wastes disposal facility) of the treated and untreated soils;
- Excavation and disposal (at a permitted off-site waste disposal facility) of approximately 2,100 $yd^3$ of soils contaminated with benzo(a)pyrene, or other organics, at the MW–11 location, and total petroleum hydrocarbons at the MW–20 location;
- Confirmation sampling for several locations identified to have been impacted by either semi-volatile organic compounds.

*Cleanup Goals*

The soil remedial action at the Site consisted of the sampling and excavation, including the proper disposal of the soils contaminated with arsenic greater than 20 mg/kg and benzo(a)pyrene greater than 5.27 mg/kg. The soil cleanup levels were based on a residential scenario of 20 mg/kg for arsenic and an industrial scenario of 1.55 mg/kg for benzo(a)pyrene specified in Record of Decision Amendment. The sediment remedial action at the Site consisted of the sampling and excavation, including the proper disposal of the sediments contaminated with arsenic greater than 20 mg/kg and benzo(a)pyrene greater than 0.782 mg/kg. The sediment cleanup levels were based on a residential scenario of 20 mg/kg for arsenic and an ecological scenario of 0.782 mg/kg for benzo(a)pyrene specified in the Record of Decision. Institutional controls were required for the soils since the soils were cleaned up to an industrial level which did not exceed the cleanup level below 1.5 feet below ground surface. A total of 107,299 tons, approximately 105, 993 cubic yards, of material were sent to the Waste Connection Landfill in Alex, Oklahoma.

The EPA reviewed the remedial action contract and the construction work for compliance with quality assurance and quality control (QA/QC) protocols. Construction activities at the Site were determined to be consistent with the ROD and adhered to the approved quality assurance plan which

incorporated all EPA and State requirements. Confirmatory inspections, independent testing, audits, and evaluations of materials and workmanship were performed in accordance with the technical specifications and plans. The EPA Remedial Project Manager and State regulators visited the site during construction activities to review construction progress and evaluate and review the results of QA/QC activities. No deviations or non-adherence to QA/QC protocols, or specifications were identified.

The quality assurance project plan incorporated all EPA and State QA/QC procedures and protocols. All monitoring equipment was calibrated and operated in accordance with the manufacturer's instructions. The EPA analytical methods were used for all confirmation and monitoring samples during RA activities. Contract laboratory program-like procedures and protocol were followed for soil, sediments, and water analyses during the RA using a private laboratory.

The EPA contract for the remedial action contained provisions for performing sampling during all remedial activities in order to verify that remedial objectives were met, to ensure quality control and assurance for all excavation and construction activity, and to ensure protection and safety of the public, the environment, and the onsite worker. Sampling was conducted in accordance with the Site Field Sampling Plan and all analytical results are below the established cleanup levels for an industrial reuse scenario. In addition, all backfill confirmation sample results met the established cleanup levels for an industrial reuse scenario. All analytical data was independently validated, and the EPA determined that analytical results were accurate to the degree needed to assure satisfactory execution of the RA.

*Operation and Maintenance*

An Operation and Maintenance (O&M) plan for the Site is in effect and is required because waste has been left in place and the Site has been restricted to industrial use. ODEQ is responsible for conducting O&M activities on annual basis or more frequently if necessary. O&M activities include Site inspections for erosion, property uses, and enforcement of the Institutional Controls (ICs). This activity may also include maintenance of the slopes through grading, seeding, or importing of backfill that may be needed. Maintenance of these slopes will provide continued slope support, continued drainage control, and continued vegetation growth. Areas of primary interest will include the slopes along Hwy 142, Atlas Roofing Inc., Oneok Gas Pipeline, BNSF Railway, and Valero Refining. Site operational and functional activities were conducted by EPA until ODEQ took over O&M of the Site in December 2012.

*Institutional Controls*

All administrative tools have been implemented at the Imperial Refining Superfund Site. Seven deed notices/covenants identifying restrictions were filed with the Carter County Clerk from June 2009 to August 2011. Appendix N of the Final Remedial Action Report contains copies of each deed notice/covenant.

Some of the deed restrictions include the following requirements and information:

- No residential land use,
- No digging below 5 feet where waste remains in place,
- No activities that will disturb or cause erosion of the sediments within the ponds located on the site,
- No excavations causing erosion,
- No excavation below base material of the road bed (State Highway 142) Roadway and right-of-way, and
- No ground water taken or well drilling allowed.

*Five-Year Review*

Five-Year Reviews of the Site are statutorily required because hazardous substances, pollutants, or contaminants remain at the Site above levels that allow for unlimited use and unrestricted exposure. The first five-year review was conducted at the Site in February 2013. The implemented action taken at the Imperial Refining Superfund Site was found to be protective of human health and the environment in the long-term. The Imperial Refining Co. Superfund Site's first Five-Year Review Report protectiveness determination follows:

> The selected remedy for the Site currently protects human health and the environment because the remedy is performing as intended and institutional controls are in place restricting land and groundwater use. The remedy will remain protective of human health and the environment in the long-term provided O&M activities continue, and the institutional controls remain in place.

The next Five-Year Review will be performed in 2018.

*Community Involvement*

Public participation activities have been satisfied as required in CERCLA Section 113(k), 42 U.S.C. 9613(k) and CERCLA Section 117, 42 U.S.C. 9617. Throughout the Site's history, the community has been interested and involved with Site activity. The EPA has kept the community and other interested parties updated on Site activities through informational meetings, fact sheets, and public meetings. Documents in the deletion docket which the EPA relied on for recommendation for the deletion from the NPL are available to the public in the information repositories, and a notice of availability of the Notice of Intent for Deletion has been published in the *Daily Ardmorite* to satisfy public participation procedures required by 40 CFR 300.425(e)(4).

*Determination That the Criteria for Deletion Have Been Met*

The implemented remedy achieves the degree of cleanup specified in the ROD and ROD Amendment for all pathways of exposure. All selected remedial action objectives and clean-up goals are consistent with agency policy and guidance. No further Superfund responses are needed to protect human health and the environment at the Site.

In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate.

**V. Deletion Action**

The EPA, with concurrence of the State of Oklahoma, through the ODEQ, has determined that all appropriate response actions under CERCLA have been completed. Therefore, EPA is deleting the Site from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication. This action will be effective September 19, 2013 unless EPA receives adverse comments by September 4, 2013. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion and it will not take effect. EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

**List of Subjects in 40 CFR Part 300**

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: July 25, 2013.

**Ron Curry,**

*Regional Administrator, Region 6.*

For the reasons set out in this document, 40 CFR Part 300 is amended as follows:

## PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN

■ 1. The authority citation for part 300 continues to read as follows:

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

### Appendix B—[Amended]

■ 2. Table 1 of Appendix B to Part 300 is amended by removing the entry ''Imperial Refining Company'', ''Ardmore'', ''OK''.

[FR Doc. 2013–18875 Filed 8–2–13; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### 45 CFR Part 5b

**RIN 0906–AA97**

## National Practitioner Data Bank and Privacy Act; Exempt Records System; Technical Correction

**AGENCY:** Health Resources and Services Administration (HRSA).

**ACTION:** Correcting amendments.

**SUMMARY:** These correcting amendments update a cross reference cited in the Privacy Act regulations. The National Practitioner Data Bank (NPDB) system of records (09–15–0054) is exempt from certain provisions of the Privacy Act, and the cross reference cited refers to the regulations that govern the NPDB. As a result of Section 6403 of the Affordable Care Act, the regulations governing the NPDB were revised and certain section numbers in the NPDB regulations were changed, including the NPDB regulation that was cross referenced. This change is technical in nature and does not significantly alter the current NPDB exemption.

**DATES:** This final rule is effective August 5, 2013.

**FOR FURTHER INFORMATION CONTACT:** Ernia Hughes, Acting Director, Division of Practitioner Data Banks, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, 5600 Fishers Lane, Room 8–103, Rockville, Maryland 20857; Telephone (301) 443–2300.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The NPDB was established by Title IV of Public Law 99–660, the *Health Care Quality Improvement Act of 1986,* as amended. The NPDB is primarily an alert or flagging system intended to facilitate a comprehensive review of health care practitioners' professional credentials. Section 1128E of the Social Security Act, added by the *Health Insurance Portability and Accountability Act (HIPAA) of 1996,* (Pub. L. 104–191), created the Health Care Integrity and Protection Data Bank (HIPDB). Because a major component of the HIPAA's purpose was to establish a health care fraud and abuse control program, the legislation required the creation of a national data bank to receive and disclose certain adverse actions against health care practitioners, providers, and suppliers, thus establishing the HIPDB. Together the HIPDB and NPDB served to facilitate the review of health care practitioners' and entities' backgrounds, however, some of the information collected under the HIPDB is also available under the NPDB.

In recognition of the overlapping purposes of the laws governing the two data banks, and to eliminate the duplicative information in both data banks, Section 6403 of the Affordable Care Act required the Secretary for the Department of Health and Human Services (HHS) to merge the data banks so that information previously collected and disclosed under the Section 1128E authority be transferred and made available under the NPDB. In addition, Section 6403 ceases HIPDB operations. The Affordable Care Act effectively streamlines data reporting and disclosure through the merge of the data banks and improves program efficiency around reporting and querying. On April 5, 2013, HRSA published a final rule in the **Federal Register** (78 FR 20473), implementing the merge of the HIPDB information into the NPDB. The rule became effective on May 6, 2013. All security standards remain in place to protect the confidentiality of the NPDB. Section 1128E information now reported under the NPDB is still only available to those entities authorized to query it.

Because the statute permits the information collected in the NPDB and HIPDB to be used by federal and state government agencies with the responsibility of investigating and prosecuting violations of civil and criminal laws, the NPDB and HIPDB were made exempt from certain portions of the Privacy Act under two separate provisions, 45 CFR 5b.11(b)(2)(ii)(F) and (L). As cross referenced in this section, the access and correction rights of individuals are detailed in the regulations governing the NPDB and HIPDB.

### II. Summary of the Correction

This final rule revises the cross reference found in the Privacy Act regulations at 45 CFR 5b.11(b)(2)(ii)(L) from § 60.16 to § 60.21, to reflect the changes made to the NPDB regulation required by the Affordable Care Act.

The system of records notice for the NPDB, which was last published in the **Federal Register** on March 30, 2012, (77 FR 19295), is being republished elsewhere in this issue of the **Federal Register** to reflect this change.

### III. Waiver of Proposed Rulemaking

HHS ordinarily publishes a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect, in accordance with Section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). However, this notice and comment procedure can be waived if the Secretary finds, for good cause, that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons therefore in the notice.

Section 553(d) of the APA ordinarily requires a 30-day delay in effective date of final rules after the date of their publication in the **Federal Register**. This 30-day delay in effective date can be waived, however, if an agency finds there is good cause to do so, and the agency incorporates a statement of the findings and its reasons in the rule issued.

This document is purely technical in nature and merely corrects a cross-reference in the Privacy Act regulations at 45 CFR 5b.11(b)(2)(ii)(L), from § 60.16 to § 60.21. The change is not a substantive change and does not alter any rights or obligations. Therefore, the Secretary believes that undertaking further notice and comment procedures to incorporate this correction, which will delay the effective date for this change, is unnecessary. In addition, the Secretary believes it is important for the public to have the correct information as soon as possible, and further believes it is contrary to the public interest to delay the dissemination of it. For the reasons stated above, the Secretary finds there is good cause to waive notice and comment procedures and the 30-day delay in the effective date for this correction notice.

## Economic and Regulatory Impact

This final rule is technical in nature and does not increase regulatory burden. In accordance with the provisions of Executive Orders 13563 and 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), the Office of Management and Budget has determined that it will have no major effect on the economy or federal expenditures. This rule is not economically significant under section 3(f) of Executive Order 12866 and is not being treated as a ''significant regulatory action'' under section 3(f). Accordingly, the rule has not been reviewed by the Office of Management and Budget.

The Secretary has determined that this final rule is not a ''major rule'' within the meaning of the statute providing for Congressional Review of Agency Rulemaking, 5 U.S.C. 801, and has determined that it does not meet the criteria for a significant regulatory action. In addition, under the Small Business Enforcement Act (SBEA) of 1996, if a rule has a significant economic effect on a substantial number of small businesses, the Secretary must specifically consider the economic effect of a rule on small business entities and analyze regulatory options that could lessen the impact of the rule. The Secretary has reviewed this exemption in accordance with the provisions of the SBEA and certifies that this exemption will not have a significant impact on a substantial number of small entities.

Similarly, it will not have effects on state, local, and tribal governments and on the private sector such as to require consultation under the Unfunded Mandates Reform Act of 1995.

Executive Order 13132 requires agencies to meet certain requirements when a rule has ''federal implications,'' and may have ''substantial direct effects on the states, or on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.'' The Secretary has reviewed this final rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have substantial federalism implications or direct costs and implications for the state and local governments.

## Paperwork Reduction Act

This final rule does not have any information collection requirements.

## List of Subjects in 45 CFR Part 5b

Privacy.

Dated: July 5, 2013.

**Mary Wakefield,**

*Administrator, Health Resources and Services Administration.*

Approved: July 26, 2013.

**Kathleen Sebelius,**

*Secretary.*

Amend 45 CFR part 5b as follows:

## PART 5b—PRIVACY ACT REGULATIONS

■ 1. The authority citation for part 5b continues to read as follows:

**Authority:** 5 U.S.C. 301, 5 U.S.C. 552a.

■ 2. Revise § 5b.11(b)(2)(ii)(L) to read as follows:

### § 5b.11 Exempt systems.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(L) Investigative materials compiled for law enforcement purposes for the National Practitioner Data Bank (NPDB). (See § 60.21 of this subchapter for access and correction rights under the NPDB by subjects of the Data Bank.)

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[FR Doc. 2013–18598 Filed 8–2–13; 8:45 am]

BILLING CODE 4165–15–P

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## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 54

**[WC Docket No. 10–90; FCC 11–161, FCC 12–52, FCC 12–137, DA 13–332]**

## Connect America Fund

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; announcement of effective date.

**SUMMARY:** In this document, the Commission announces that the Office of Management and Budget (OMB) has approved, for a period of three years, certain information collection associated with the Commission's *Universal Service—Connect America Fund,* Report and Order and Further Notice of Proposed Rulemaking, 76 FR 73830, November 29, 2011, Third Order on Reconsideration, 77 FR 30904, May 24, 2012, Fifth Order on Reconsideration, 78 FR 3837, January 17, 2013, and Order, 78 FR 22198, April 15, 2013 (*Orders*). The Commission submitted revised information collection requirements for review and approval by OMB, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), 78 FR 34096, June 6, 2013, which were approved by the OMB on July 22, 2013. This notice is consistent with the *Orders,* which stated that the Commission would publish a document in the **Federal Register** announcing the effective date of those rules.

**DATES:** 47 CFR 54.313(a)(7) through (a)(10), and (c) through (g) published at 76 FR 73830, November 29, 2011, 47 CFR 54.313(h) published at 77 FR 30904, May 24, 2012 and 47 CFR 54.313(f)(2)(i) through (iii) published at 78 FR 3837, January 17, 2013, and 47 CFR 54.313(a) published at 78 FR 22198, April 15, 2013, are effective August 5, 2013.

**FOR FURTHER INFORMATION CONTACT:** Alexander Minard, Wireline Competition Bureau at (202) 418–7400 or TTY (202) 418–0484.

**SUPPLEMENTARY INFORMATION:** This document announces that, on July 22, 2013, OMB approved, for a period of three years, certain information collection requirements contained in the Commission's *Orders,* FCC 11–161, published at 76 FR 73830, November 29, 2011, FCC 12–52, published at 77 FR 30904, May 24, 2012 and FCC 12–137, published at 78 FR 3837, January 17, 2013, and DA 13–332, published at 78 FR 22198, April 15, 2013. The OMB Control Number is 3060–0986. The Commission publishes this notice as an announcement of the effective date of 47 CFR 54.313(a)(7)–(a)(10), and (c)–(h). If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Judith B. Herman, Federal Communications Commission, Room 1–C823, 445 12th Street SW., Washington, DC 20554. Please include the OMB Control Number, 3060–0986, in your correspondence. The Commission will also accept your comments via email. Please send them to *PRA@fcc.gov.*

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

## Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received OMB approval on July 22, 2013, for the information collection requirements contained in the Commission's rules at 47 CFR 54.313(a) through (h).

Under 5 CFR 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Number is 3060–0986.

The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the respondents are as follows:

*OMB Control Number:* 3060–0986.

*OMB Approval Date:* July 22, 2013.

*OMB Expiration Date:* July 31, 2016.

*Title:* Competitive Carrier Line Count Report and Self-Certification as a Rural Carrier, WC Docket No. 10–90.

*Form No.:* FCC Forms 525 and 481.

*Respondents:* Business or other for-profit entities, not-for-profit institutions and state, local or tribal government.

*Number of Respondents and Responses:* 8,690 respondents; 8,804 responses.

*Estimated Time per Response:* .5 hours to 100 hours.

*Frequency of Response:* Annual, on occasion and quarterly reporting requirements, recordkeeping requirement and third party disclosure requirement.

*Obligation to Respond:* Required to obtain or retain benefits. Statutory authority for this information collection is contained in *47 U.S.C. 151, 154(i)* and *(j), 205, 221(c), 254, 303(r), 403, 410* and *1302* of the Communications Act of 1934, as amended.

*Total Annual Burden:* 272,017 hours.

*Total Annual Cost:* N/A.

*Nature and Extent of Confidentiality:* Parties may submit confidential information in relation to sub-item o in item 12 of the supporting statement pursuant to a protective order. We note that USAC must preserve the confidentiality of all data obtained from respondents and contributors to the universal service program; must not use the data except for the purposes of administering the universal service support program; and must not disclose data in company-specific form unless directed to do so by the Commission.

*Needs and Uses:* The Commission has received OMB approval for a three year period to the revisions of this information collection. There are no changes to the FCC Form 525, which is part of this information collection. New FCC Form 481 is being added to this information collection. FCC Form 481 will collect information described in the supporting statement from sub-items h–p of item 12. FCC Form 481 will also collect information, already approved under OMB Control Number 3060–0819, that ETCs receiving low-income universal service support must include in their annual reports. The Commission developed FCC Form 481 in order to reduce the burden on ETCs subject to both high-cost and low-income reporting rules and so the information will be collected in a uniform format. For complete details regarding this revision, please see the 60 day notice that was published in the **Federal Register** on February 25, 2013, 78 FR 12750.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 2013–18711 Filed 8–2–13; 8:45 am]

**BILLING CODE 6712–01–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 622

**[Docket No. 1206013412–2517–02]**

**RIN 0648–XC733**

### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; 2013 Commercial Accountability Measure and Closure for South Atlantic Snowy Grouper

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS implements accountability measures (AMs) for commercial snowy grouper in the exclusive economic zone (EEZ) of the South Atlantic. Commercial landings for snowy grouper, as estimated by the Science and Research Director (SRD), are projected to reach the commercial annual catch limit (ACL) (commercial quota) on August 10, 2013. Therefore, NMFS closes the commercial sector for snowy grouper in the South Atlantic EEZ on August 10, 2013, and it will remain closed until the start of the next fishing season, January 1, 2014. This closure is necessary to protect the snowy grouper resource.

**DATES:** This rule is effective 12:01 a.m., local time, August 10, 2013, until 12:01 a.m., local time, January 1, 2014.

**FOR FURTHER INFORMATION CONTACT:** Catherine Hayslip, telephone: 727–824–5305, email: *Catherine.Hayslip@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** The snapper-grouper fishery of the South Atlantic includes snowy grouper and is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the South Atlantic Fishery Management Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622.

The commercial ACL (equivalent to the commercial quota) for snowy grouper in the South Atlantic is 82,900 lb (37,603 kg), gutted weight, for the current fishing year, January 1 through December 31, 2013, as specified in 50 CFR 622.190(a)(1).

Under 50 CFR 622.193(b)(1), NMFS is required to close the commercial sector for snowy grouper when the commercial ACL (commercial quota) is reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. NMFS has determined that the commercial ACL for South Atlantic snowy grouper will have been reached by August 10, 2013. Accordingly, the commercial sector for South Atlantic snowy grouper is closed effective 12:01 a.m., local time, August 10, 2013, until 12:01 a.m., local time, January 1, 2014.

The operator of a vessel with a valid commercial vessel permit for South Atlantic snapper-grouper having snowy grouper onboard must have landed and bartered, traded, or sold such snowy grouper prior to 12:01 a.m., local time, August 10, 2013. NMFS implemented a closure of the recreational sector for snowy grouper in the South Atlantic on May 31, 2013 (78 FR 30779, May 23, 2013). During the recreational closure, and thus, during this commercial closure, the bag and possession limit for snowy grouper in or from the South Atlantic EEZ is zero. Also during the commercial closure, the sale or purchase of snowy grouper taken from the EEZ is prohibited. The prohibition on sale or purchase does not apply to the sale or purchase of snowy grouper that were harvested, landed ashore, and sold prior to 12:01 a.m., local time, August 10, 2013, and were held in cold storage by a dealer or processor.

For a person on board a vessel for which a Federal commercial or charter vessel/headboat permit for the South Atlantic snapper-grouper fishery has been issued, the bag and possession limit and the sale and purchase provisions of the commercial closure for

snowy grouper would apply regardless of whether the fish are harvested in state or Federal waters, as specified in 50 CFR 622.190(c)(1)(ii).

**Classification**

The Regional Administrator, Southeast Region, NMFS, has determined this temporary rule is necessary for the conservation and management of snowy grouper and the South Atlantic snapper-grouper fishery and is consistent with the Magnuson-Stevens Act, the FMP, and other applicable laws.

This action is taken under 50 CFR 622.193(b)(1) and is exempt from review under 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.

This action responds to the best available scientific information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds that the need to immediately implement this action to close the commercial sector for snowy grouper constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), as such procedures would be unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule itself has been subject to notice and comment, and all that remains is to notify the public of the closure.

Allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this action to protect snowy grouper since the capacity of the fishing fleet allows for rapid harvest of the commercial ACL (commercial quota). Prior notice and opportunity for public comment would require time and would potentially result in a harvest well in excess of the established commercial ACL (commercial quota).

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: July 31, 2013.

**Kelly Denit,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2013–18817 Filed 7–31–13; 4:15 pm]

BILLING CODE 3510–22–P

# Proposed Rules

Federal Register
Vol. 78, No. 150
Monday, August 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.

## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

### 7 CFR Part 457

**[Docket No. FCIC–13–0002]**

**RIN 0563–AC41**

## Common Crop Insurance Regulations; Extra Long Staple Cotton Crop Provisions

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) proposes to amend the Common Crop Insurance Regulations, Extra Long Staple (ELS) Cotton Crop Insurance Provisions to make the ELS Cotton Crop Insurance Provisions consistent with the Upland Cotton Crop Insurance Provisions and to allow a late planting period. The intended effect of this action is to provide policy changes and to better meet the needs of the producers. The changes will apply for the 2014 and succeeding crop years.

**DATES:** Written comments and opinions on this proposed rule will be accepted until close of business September 4, 2013 and will be considered when the rule is to be made final.

**ADDRESSES:** FCIC prefers that comments be submitted electronically through the Federal eRulemaking Portal. You may submit comments, identified by Docket ID No. FCIC–13–0002 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, P.O. Box 419205, Kansas City, MO 64133–6205.

All comments received, including those received by mail, will be posted without change to *http://www.regulations.gov,* including any personal information provided, and can be accessed by the public.

All comments must include the agency name and docket number or Regulatory Information Number (RIN) for this rule. For detailed instructions on submitting comments and additional information, see *http://www.regulations.gov.* If you are submitting comments electronically through the Federal eRulemaking Portal and want to attach a document, we ask that it be in a text-based format. If you want to attach a document that is a scanned Adobe PDF file, it must be scanned as text and not as an image, thus allowing FCIC to search and copy certain portions of your submissions. For questions regarding attaching a document that is a scanned Adobe PDF file, please contact the RMA Web Content Team at (816) 823–4694 or by email at *rmaweb.content@rma.usda.gov.*

*Privacy Act:* Anyone is able to search the electronic form of all comments received for any dockets by the name of the person submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the complete User Notice and Privacy Notice for Regulations.gov at *http://www.regulations.gov/#!privacyNotice.*

**FOR FURTHER INFORMATION CONTACT:** Claire White, Economist, Product Management, Product Administration and Standards Division, Risk Management Agency, at the Kansas City, MO, address listed above, telephone (816) 926–7730.

**SUPPLEMENTARY INFORMATION:**

### Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is not-significant for the purpose of Executive Order 12866 and, therefore, it has not been reviewed by OMB.

### Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by OMB under control number 0563–0053.

### E-Government Act Compliance

FCIC is committed to complying with the E-Government Act of 2002, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

### Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

### Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

### Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

### Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees and compute premium amounts, and all producers are required to submit a notice of loss and production information to determine the amount of an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10 acres or

1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure that small entities are given the same opportunities as large entities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

**Federal Assistance Program**

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

**Executive Order 12372**

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

**Executive Order 12988**

This proposed rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC or action by FCIC to require the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC for judicial review may be brought.

**Environmental Evaluation**

This action is not expected to have a significant economic impact on the quality of the human environment, health, or safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

**Background**

FCIC proposes to amend the Common Crop Insurance Regulations (7 CFR part 457) by revising § 457.105 Extra Long Staple Cotton Crop Insurance Provisions to be effective for the 2014 and succeeding crop years. Requests from the public have been made for changes to improve the coverage offered, address program integrity issues, and simplify program administration. The provisions will be effective for the 2014 and succeeding crop years.

The proposed changes to § 457.105 are as follows:

1. Section 9—FCIC proposes to revise section 9 to make it more consistent with the language currently in the Cotton Crop Provisions (§ 457.104). The ELS Crop Provisions currently include language that is already contained in the Basic Provisions. By making the language in certain sections of the ELS Cotton Crop Provisions more consistent with the Cotton Crop Provisions, both Crop Provisions will be the same and duplicative language between the ELS Cotton Crop Provisions and the Basic Provisions can be removed.

2. Section 11—FCIC proposes to allow for a late planting period if permitted by the Special Provisions. FCIC received inquiries from cotton producers and producer groups requesting a late planting provision. A late planting provision is available for Upland cotton which is insured under the Cotton Crop Provisions, but not for ELS cotton. The cotton industry requested a late planting option be available for both Upland cotton and ELS cotton. Based on research data of producers' planting practices and yields information from the University of California Cooperative Extension, a late planting period that extends from the April 30 final planting date to early May has minor impact to yields given historically favorable weather conditions in May. FCIC also proposes to revise section 11 to remove language that is contained in the Basic Provisions regarding late planting because it is duplicative and no longer needed.

**List of Subjects in 7 CFR Part 457**

Crop insurance, Extra Long Staple Cotton, Reporting and recordkeeping requirements.

**Proposed Rule**

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation proposes to amend 7 CFR part 457 effective for the 2014 and succeeding crop years to read as follows:

## PART 457—COMMON CROP INSURANCE REGULATIONS

■ 1. The authority citation for 7 CFR part 457 continues to read as follows:

**Authority:** 7 U.S.C. 1506(1), 1506(o).

■ 2. Amend § 457.105 as follows:

■ a. Amend the introductory text by removing ''2012'' and adding ''2014'' in its place;

■ b. Revise section 9; and

■ c. Revise section 11.

The revisions read as follows:

**§ 457.105 Extra long staple cotton crop insurance provisions.**

* * * * *

■ 9. Duties in the Event of Loss or Damage.

(a) In addition to your duties under section 14 of the Basic Provisions, in the event of damage or loss:

(1) You must give us notice if you intend to replant any acreage originally planted to ELS cotton to AUP cotton; and

(2) The cotton stalks must remain intact for our inspection. The stalks must not be destroyed, and required samples must not be harvested, until the earlier of our inspection or 15 days after harvest of the balance of the unit is completed and written notice of probable loss given to us.

(b) Representative samples are required in accordance with section 14 of the Basic Provisions.

* * * * *

■ 11. Late Planting.

(a) A late planting period is applicable to ELS cotton, if allowed by the Special Provisions.

(b) If the Special Provisions do not provide for a late planting period, any ELS cotton that is planted after the final planting date will not be insured unless you were prevented from planting it by the final planting date. Such acreage will be insurable, and the production guarantee and premium for the acreage will be determined in accordance with section 16 of the Basic Provisions.

* * * * *

Signed in Washington, DC, on July 29, 2013.

**Michael Alston,**

*Acting Manager, Federal Crop Insurance Corporation.*

[FR Doc. 2013–18821 Filed 8–2–13; 8:45 am]

BILLING CODE 3410–08–P

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## DEPARTMENT OF AGRICULTURE

## Animal and Plant Health Inspection Service

## 9 CFR Parts 2 and 3

**[Docket No. APHIS–2012–0107]**

## Petition to Amend Animal Welfare Act Regulations To Prohibit Public Contact With Big Cats, Bears, and Nonhuman Primates

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** We are notifying the public that the Animal and Plant Health Inspection Service has received a petition requesting amendments to the Animal Welfare Act regulations and standards, including to prohibit licensees from allowing individuals, with certain exceptions, from coming into direct or physical contact with big cats, bears, or nonhuman primates of any age, to define the term ''sufficient distance,'' and to prohibit the public handling of young or immature big cats, bears, and nonhuman primates and the separation of such animals from their dams before the species-typical age of weaning absent medical necessity. We are making this petition available to the public and soliciting comments regarding the petition and any additional issues we should take into account as we consider this petition.

**DATES:** We will consider all comments that we receive on or before October 4, 2013.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2012-0107-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2012–0107, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2012-0107* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

**FOR FURTHER INFORMATION CONTACT:** Dr. Barbara Kohn, DVM, Senior Staff Officer, USDA, APHIS, Animal Care, 4700 River Road Unit 84, Riverdale, MD 20737–1234; (301) 851–3751.

**SUPPLEMENTARY INFORMATION:**

## Background

The Animal Welfare Act (AWA, 7 U.S.C. 2131 *et seq.*) authorizes the Secretary of Agriculture to promulgate standards and other requirements governing the humane handling, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, operators of auction sales, and carriers and intermediate handlers. The Secretary has delegated the responsibility for enforcing the AWA to the Administrator of the Animal and Plant Health Inspection Service (APHIS). Within APHIS, the responsibility for administering the AWA has been delegated to the Deputy Administrator for Animal Care. Regulations and standards established under the AWA are contained in 9 CFR parts 1, 2, and 3. Part 1 contains definitions for terms used in parts 2 and 3; part 2 contains licensing and registration regulations, regulations specific to research facilities, and regulations governing veterinary care, animal identification, recordkeeping, access for inspection, confiscation of animals, and handling among other requirements; and part 3 contains specific standards for the humane handling, care, treatment, and transportation of categories of animals covered under the AWA. Currently, part 3 consists of subparts A through F, which contain specific standards for dogs and cats, guinea pigs and hamsters, rabbits, nonhuman primates, marine mammals, and general standards for warmblooded animals not otherwise specified in previous subparts, respectively.

Within part 2, § 2.131 generally contains provisions for licensee qualifications, training, careful handling, rest periods, attendants, climatic conditions, and public exhibition. Paragraph (b)(1) requires that all animals be handled in a manner that prevents trauma, behavioral stress, physical harm, or unnecessary discomfort to them. Paragraph (c)(1) places conditions on the public exhibition of animals. It requires that during public exhibition, all animals must be handled with sufficient distance and/or barriers between the animal and the public so as to ensure the safety of the animals and the public. Paragraphs (c)(2), (c)(3), and (c)(4) require that performing animals be given rest periods, that young or immature animals cannot be exposed to rough or excessive public handling or exhibited for periods of time that would be inconsistent with their health and well-being, and that drugs, such as tranquilizers, cannot be used to facilitate public handling of any animals. Paragraph (d) requires that animals be exhibited only for periods of time and under conditions consistent with their health and well-being, that responsible, knowledgeable, and identifiable employees or attendants be present at all times during public contact with animals, and specifically requires that dangerous animals such as lions, tigers, wolves, bears, or elephants, be under the direct control and supervision of an experienced handler during public exhibition.

APHIS has received a petition [1] requesting that we amend the regulations in part 2 to explicitly prohibit licensees from allowing persons, with some exceptions, from coming into direct physical contact with any big cats, bears, and nonhuman primates of any age. The petition states that the current handling regulations in 9 CFR part 2 allow licensees the opportunity to engage in animal exhibition practices via public contact venues, such as interactive sessions and photographic opportunities, and that these activities place these animals at risk of harm, threaten public safety, undermine conservation efforts, and encourage irresponsible breeding. The petitioners contend that the existing handling regulations are difficult to enforce, subjective, and inconsistently applied. The petitioners propose specific regulatory language that would, if incorporated into the regulations, amend § 2.131 to eliminate the possibility of direct physical contact with big cats, bears, and nonhuman primates by any individual, other than trained licensee employees, licensed veterinarians, and veterinary students under the supervision of a licensed veterinarian; define ''sufficient distance'' under paragraph (c)(1) of § 2.131; and prevent the separation of young or immature big cats, bears, or nonhuman primates from their dams before the species-typical age of weaning unless medically necessary. The petitioners also suggest revisions to 9 CFR part 3 to ensure that the sections containing specific standards for the handling of nonhuman primates are consistent with the regulatory changes they propose in § 2.131.

We are making this petition available to the public and soliciting comments to help determine what action, if any, we should take in response to this request. The petition and any comments submitted are available for review as indicated under **ADDRESSES** above. We welcome all comments on the issues outlined in the petition and the supporting declarations. In addition, we invite responses to the following questions:

- Are there circumstances under which public contact with young big cats, bears, and nonhuman primates

[1] Petitioners include the Humane Society of the United States, World Wildlife Fund, The Global Federation of Animal Sanctuaries, The International Fund for Animal Welfare, Born Free USA, The Fund for Animals, Big Cat Rescue, and the Detroit Zoological Society.

may be done without risk of harm to the animals or to the public?

• Should exhibitors and dealers be required to keep additional records (beyond those already required) regarding big cats, bears, and nonhuman primates? If so, what kinds of information should be required to be kept?

• Should exhibitors and dealers be required to identify big cats, bears, and nonhuman primates by means of tattoos, microchips, retinal scans, or the like?

We encourage the submission of scientific data, studies, or research to support your comments and position, including scientific data or research that supports any industry or professional standards that pertain to the humane treatment of big cats, bears, and nonhuman primates. We also invite data on the costs and benefits associated with any recommendations. We will consider all comments and recommendations we receive.

**Authority:** 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.7.

Done in Washington, DC, this 31st day of July 2013.

**Kevin Shea,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2013–18874 Filed 8–2–13; 8:45 am]

BILLING CODE 3410–34–P

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

### 12 CFR Part 46

**[Docket No. OCC–2013–0013]**

## FEDERAL RESERVE SYSTEM

### 12 CFR Part 252

**[Docket No. OP–1461]**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### 12 CFR Part 325

## Proposed Supervisory Guidance on Implementing Dodd-Frank Act Company-Run Stress Tests for Banking Organizations With Total Consolidated Assets of More Than $10 Billion But Less Than $50 Billion

**AGENCIES:** Board of Governors of the Federal Reserve System (''Board'' or ''Federal Reserve''); Federal Deposit Insurance Corporation (''FDIC''); Office of the Comptroller of the Currency, Treasury (''OCC'').

**ACTION:** Proposed supervisory guidance.

**SUMMARY:** The Board, FDIC and OCC, (collectively, the ''agencies'') are issuing this guidance, which outlines high-level principles for implementation of section 165(i)(2) of the Dodd-Frank Act Wall Street Reform and Consumer Protection Act (''DFA'') stress tests, applicable to all bank and savings-and-loan holding companies, national banks, state-member banks, state non-member banks, Federal savings associations, and state chartered savings associations with more than $10 billion but less than $50 billion in total consolidated assets (collectively, the ''$10–50 billion companies''). The guidance discusses supervisory expectations for DFA stress test practices and offers additional details about methodologies that should be employed by these companies. It also underscores the importance of stress testing as an ongoing risk management practice that supports a company's forward-looking assessment of its risks and better equips the company to address a range of macroeconomic and financial outcomes.

**DATES:** Comments on this joint proposed guidance are due to the OCC and FDIC on September 25th, 2013 and to the Federal Reserve on September 30th, 2013.

**ADDRESSES:**

OCC: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email, if possible. Please use the title ''Proposed Supervisory Guidance on Implementing Dodd-Frank Act Company-Run Stress Tests for Banking Organizations with Total Consolidated Assets of more than $10 Billion but less than $50 Billion'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

• Email: *regs.comments@occ.treas.gov.*

• Mail: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.

• Hand Delivery/Courier: 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.

• Fax: (571) 465–4326.

*Instructions:* You must include ''OCC'' as the agency name and ''Docket ID OCC–2013–0013'' in your comment. In general, OCC will enter all comments received into the docket and publish them on the Regulations.gov Web site without change, including any business or personal information that you provide such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this notice by any of the following methods:

• Viewing Comments Personally: You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

• Docket: You may also view or request available background documents and project summaries using the methods described above.

Board: You may submit comments, identified by Docket No. OP–1461, ''Proposed Supervisory Guidance on Implementing Dodd-Frank Act Company-Run Stress Tests for Banking Organizations with Total Consolidated Assets of more than $10 Billion but less than $50 Billion,'' by any of the following methods:

• Agency Web site: *http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*

• Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

• Email: *regs.comments@federalreserve.gov.* Include the docket number in the subject line of the message.

• Fax: (202) 452–3819 or (202) 452–3102.

• Mail: Address to Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments will be made available on the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets NW., Washington, DC

20551) between 9:00 a.m. and 5:00 p.m. on weekdays.

FDIC: You may submit comments, identified as ''Stress Test Guidance'', by any of the following methods:

Agency Web site: *http://www.fdic.gov/regulations/laws/federal/propose.html.* Follow instructions for submitting comments on the Agency Web site.

• Email: *Comments@fdic.gov.* Include ''Stress Test Guidance'' on the subject line of the message.

• Mail: Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

• Hand Delivery: Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.

Public Inspection: All comments received must include the agency name and ''Stress Test Guidance''. All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/propose.html,* including any personal information provided. Paper copies of public comments may be ordered from the FDIC Public Information Center, 3501 North Fairfax Drive, Room E–1002, Arlington, VA 22226 by telephone at (877) 275–3342 or (703) 562–2200.

**FOR FURTHER INFORMATION CONTACT:**

*Board:* David Palmer, Senior Financial Analyst, (202) 452–2904; Joseph Cox, Financial Analyst, (202) 452–3216; Keith Coughlin, Manager, (202) 452–2056; Benjamin McDonough, Senior Counsel, (202) 452–2036; or Christine Graham, Senior Attorney, (202) 452–3005, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551.

*FDIC:* Ryan Sheller, Senior Financial Analyst, (202) 412–4861; Mark Flanigan, Counsel, (202) 898–7427; or Jason Fincke, Senior Attorney, (202) 898–3659, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

*OCC:* Harry Glenos, Senior Financial Advisor, (202) 649–6409; Kari Falkenborg, Financial Analyst, (202) 649–6831; Ron Shimabukuro, Senior Counsel, or Henry Barkhausen, Attorney, Legislative and Regulatory Affairs Division, (202) 649–5490, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

**SUPPLEMENTARY INFORMATION:**

## I. Background

In October 2012, the agencies issued final rules implementing stress testing requirements for companies [1] with over $10 billion in total assets pursuant to section 165(i)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''DFA stress test rules'').[2] At that time, the agencies also indicated that they intended to publish supervisory guidance to accompany the final rules and assist companies in meeting rule requirements, including separate guidance for companies between $10 billion and $50 billion in total assets.

Accordingly, the agencies are issuing this proposed guidance, which would apply to all companies with total consolidated assets of more than $10 billion but less than $50 billion ($10–50 billion companies). The agencies invite public comment on this proposed guidance. The agencies expect $10–50 billion companies to follow the DFA stress rule requirements, other relevant supervisory guidance,[3] and if adopted, the expectations set forth in this document, when conducting DFA stress tests.[4]

The proposed guidance addresses the following key areas:

• *Supervisory scenarios.* Under the DFA stress test rules, $10–50 billion companies must assess the potential impact of a minimum of three macroeconomic scenarios—baseline, adverse, and severely adverse—on their consolidated losses, revenues, balance sheet (including risk-weighted assets), and capital. The proposed guidance indicates that $10–50 billion companies should apply each scenario across all business lines and risk areas so that they can assess the effect of a common scenario on the entire enterprise, though the effect of the given scenario on different business lines and risk areas may vary. These companies may use all or, as appropriate, a subset of the variables from the supervisory scenarios to conduct a stress test, depending on whether the variables are relevant or appropriate to the company's line of business. The companies may, but are not required to, include additional variables or additional quarters to improve their company-run stress tests. For example, the proposed guidance includes a set of questions on translating supervisory scenarios to regional variables and minimum expectations for loss estimation. However, the paths of any additional regional or local variables that a company uses would be expected to be consistent with the path of the national variables in the supervisory scenarios.

• *Data sources and segmentation.* In conducting a stress test, a company should segment its portfolios and business activities into categories based on common or related risk characteristics. The company should select the appropriate level of segmentation based on the size, materiality, and riskiness of a given portfolio, provided there are sufficiently granular historical data available to allow for the desired segmentation. A company would be expected to be able to segment its data at a level at least as granular as the reporting form it uses to report the results to its primary regulator and the Board (''$10–50 billion reporting form''), but may use a more granular segmentation, particularly for more material or riskier portfolios.[5] If a company does not currently have sufficient internal data to conduct a stress test, it may use an alternative data source as a proxy for its own risk profile and exposures. However, companies with limited data would be expected to construct strategies to develop sufficient data to improve their stress test estimation processes over time.

• *Loss estimation.* In conducting a stress test, for each quarter of the planning horizon, a company must estimate the following for each required scenario: losses, pre-provision net revenue (PPNR), provision for loan and lease losses, and net income.[6] Credit losses associated with loan portfolios and securities holdings should be estimated directly and separately, whereas other types of losses should be incorporated into estimated pre-provision net revenue. Larger or more sophisticated companies should consider more advanced loss estimation practices that identify the key drivers of

[1] For the OCC, the term ''company'' is used in this guidance to refer to national banks and Federal savings associations that qualify as ''covered institutions'' under the OCC Annual Stress Test Rule. 12 CFR 46.2. For the Board, the term ''company'' is used in this guidance to refer to state member banks, bank holding companies, and savings and loan holding companies. 12 CFR 252.153. For the FDIC, the term ''company'' is used in this guidance to refer to insured state nonmember banks and insured state savings associations that qualify as a ''covered bank'' under the FDIC Annual Stress Test Rule. 12 CFR 325.202.

[2] *See* 77 FR 61238 (October 9, 2012) (OCC final rule), 77 FR 62378 (October 12, 2012) (Board final rule), and 77 FR 62417 (October 15, 2012) (FDIC final rule).

[3] In particular, companies should conduct tests in accordance with 77 FR 29458, ''Supervisory Guidance on Stress Testing for Banking Organizations With More Than $10 Billion in Total Consolidated Assets,'' (May 17, 2012).

[4] To the extent that the guidance conflicts with the requirements imposed with respect to any future statutory or regulatory stress test, companies must comply with the requirements set forth in the relevant statute or regulation.

[5] For Federal Reserve-regulated companies the relevant reporting form is the FR Y–16, for OCC-regulated companies the relevant form is the OCC DFAST 10–50, and for FDIC-regulated companies the relevant form is the FDIC DFAST 10–50.

[6] 12 CFR 252.155(a)(1).

losses for a given portfolio, segment, or loan; determine how those drivers would be affected in supervisory scenarios; and estimate resulting losses. Loss estimation practices should be commensurate with the materiality of the risks measured and well supported by sound, empirical analysis. Companies may use different processes for the baseline scenario, including their budgeting process if it is conditioned on the supervisory scenario, than for the adverse and severely adverse scenarios in order to better capture the loss potential under stressful conditions.

• *Pre-provision net revenue.* The proposed guidance indicates that companies that are less complex or less sophisticated could estimate projected PPNR based on the three main components of PPNR (net interest income, non-interest income, non-interest expense) at an aggregate, company-wide level based on industry experience. Companies that are more complex or more sophisticated should consider methods that more fully capture potential risks to their business and strategy by collecting internal revenue data, estimating revenues within specific business lines, exploring more advanced techniques that identify the specific drivers of revenue, and analyzing how the supervisory scenarios affect those revenue drivers. In addition to credit losses, companies may determine that other types of losses could arise under the supervisory scenarios. These other types of losses should be included in projections of PPNR to the extent they would arise under the specified scenario conditions. For example, companies should include in their PPNR projections any trading losses, any losses related to mortgage repurchase agreements, mortgage servicing rights, or losses related to operational risk arising in the scenarios.

• *Balance sheet and risk-weighted assets projections.* Under the proposed guidance, a company would be expected to ensure that projected balance sheet and risk-weighted assets remain consistent with regulatory and accounting changes, are applied consistently across the company, and are consistent with the scenario and the company's past history of managing through different business environments. Companies should document and explain key underlying assumptions about changes in balances or risk-weighted assets under stressful conditions, including justifying major changes, justifying any assumptions about strategies that may mitigate losses under the stressful conditions, and ensuring that the assumptions do not substantially alter the company's core businesses and earnings capacity.

• *Governance and controls.* Under the DFA stress test rules, a $10–50 billion company is required to establish and maintain a system of controls, oversight, and documentation, including policies and procedures, that are designed to ensure that its stress testing processes are effective in meeting the requirements of the DFA stress test rule. The proposed guidance describes supervisory expectations and sound practices regarding the controls, oversight, and documentation required by the rule. All $10–50 billion companies must consider the role of stress testing results in normal business including in the capital planning, assessment of capital adequacy, and risk management practices of the company. For instance, a $10–50 billion company would be expected to ensure that its post-stress capital results are aligned with its internal capital goals and risk appetite. For cases in which post-stress capital results are not aligned with a company's internal capital goals, senior management should provide options it and the board would consider to bring them into alignment.

## II. Request for Comments

The agencies invite comment on all aspects of the proposed guidance. Specifically, the agencies seek comment on the following questions.

*Question 1:* What challenges do companies expect in relating the national variables in the scenarios to regional and local market footprints?

*Question 2:* What additional clarity might be needed regarding the appropriate use of historical experience in the loss, revenue, balance sheet, and risk-weighted asset estimation process?

*Question 3:* What additional clarity should the guidance provide about the use of vendor or other third-party products and services that companies might choose to employ for DFA stress tests?

*Question 4:* How could the proposed guidance be clearer about the manner in which the required capital action assumptions between holding companies and banks differ, and how those different assumptions should be reconciled within a consolidated organization?

*Question 5:* What additional clarification would be helpful to companies about the responsibilities of their boards and senior management with regard to DFA stress tests?

The agencies request that commenters reference the question numbers above when providing answers to those questions.

## III. Administrative Law Matters

### *A. Paperwork Reduction Act Analysis*

This guidance references currently approved collections of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520) provided for in the DFA stress test rules.[7] This guidance does not introduce any new collections of information nor does it substantively modify the collections of information that Office of Management and Budget (OMB) has approved. Therefore, no Paperwork Reduction Act submissions to OMB are required.

### *B. Regulatory Flexibility Act Analysis*

*Board:*

While the guidance is not being adopted as a rule, the Board has considered the potential impact of the guidance on small companies in accordance with the Regulatory Flexibility Act (5 U.S.C. 603(b)). Based on its analysis and for the reasons stated below, the Board believes that the proposed guidance will not have a significant economic impact on a substantial number of small entities. Nevertheless, the Board is publishing a regulatory flexibility analysis.

For the reason discussed in the Supplementary Information above, the agencies are issuing this guidance to provide additional details regarding the supervisory expectations for the DFA stress tests conducted by $10–50 billion companies. Under regulations issued by the Small Business Administration (''SBA''), a small entity includes a depository institution, bank holding company, or savings and loan holding company with total assets of $500 million or less (a small banking organization).[8] The proposed guidance would apply to companies supervised by the agencies with more than $10 billion but less than $50 billion in total consolidated assets, including state member banks, bank holding companies, and savings and loan holding companies. Companies that would be subject to the proposed guidance therefore substantially exceed the $500 million total asset threshold at which a company is considered a small company under SBA regulations. In light of the foregoing, the Board does not believe that the guidance would

[7] *See* OMB Control Nos. 1557–0311 and 1557–0312 (OCC); 3064–0186 and 3064–0187 (FDIC); and 7100–0348 and 7100–0350 (Board).

[8] Effective July 22, 2013, the Small Business Administration revised the size standards for small banking organizations to $500 million in assets from $175 million in assets. 78 FR 37409 (June 20, 2013).

have a significant economic impact on a substantial number of small entities.

## IV. Proposed Supervisory Guidance

The text of the proposed supervisory guidance is as follows:

Office of the Comptroller of the Currency

Federal Reserve System

Federal Deposit Insurance Corporation

## Proposed Supervisory Guidance on Implementing Dodd-Frank Act

## Company-Run Stress Tests for Banking Organizations With Total Consolidated Assets of More Than $10 Billion but Less Than $50 Billion

### I. Introduction

In October 2012, the U.S. Federal banking agencies issued the Dodd-Frank Act stress test rules [9] requiring companies with total consolidated assets of more than $10 billion to conduct annual company-run stress tests pursuant to section 165(i)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (DFA).[10] This guidance outlines key expectations for companies with total consolidated assets of more than $10 billion but less than $50 billion that are required to conduct DFA stress tests (collectively ''companies'' or ''$10–50 billion companies'').[11] It builds upon the interagency stress testing guidance issued in May 2012 for companies with more than $10 billion in total consolidated assets (''May 2012 stress testing guidance'').[12]

The expectations described in this guidance are tailored to the $10–50 billion companies, similar to the manner in which the requirements in the DFA stress test rules were tailored for this set of companies.[13] The additional information provided in this guidance should assist companies in complying with the DFA stress test rules and conducting DFA stress tests that are appropriate for their risk profile, size, complexity, business mix, and market footprint. The DFA stress test rules allow flexibility to accommodate different practices across organizations, for example by not specifying specific methodological practices. Consistent with this approach, this guidance sets general supervisory expectations for stress tests, and provides, where appropriate, some examples of possible practices that would be consistent with those expectations.

This guidance does not represent a comprehensive list of potential practices, and companies are not required to use any specific methodological practices for their stress tests. Companies may use various practices to project their losses, revenues, and capital that are appropriate for their risk profile, size, complexity, business mix, market footprint and the materiality of a given portfolio.

### II. Background

Stress tests are an important part of a company's risk management practices, supporting a company's forward-looking assessment of its risks and helping to ensure that the company has sufficient capital to support its operations through periods of stress. The agencies have previously highlighted the importance of stress testing as a means for companies to better understand the range of potential risks. Specifically, the May 2012 stress testing guidance sets forth the following five principles for an effective stress testing regime:

1. A company's stress testing framework should include activities and exercises that are tailored to and sufficiently capture the company's exposures, activities, and risks;
2. An effective stress testing framework should employ multiple conceptually sound stress testing activities and approaches;
3. An effective stress testing framework should be forward-looking and flexible;
4. Stress test results should be clear, actionable, well supported, and inform decision-making; and
5. A company's stress testing framework should include strong governance and effective internal controls.

The agencies expect that companies will follow the principles and expectations in the May 2012 stress testing guidance when conducting their DFA stress tests. This DFA stress test guidance builds upon the May 2012 stress testing guidance, sets forth the supervisory expectations regarding each requirement of the DFA stress test rules, and provides illustrative examples of satisfactory practices. The guidance indicates where different requirements apply to banks, thrifts, and holding companies. The guidance is structured as follows:

A. DFA Stress Test Timelines
B. Scenarios for DFA Stress Tests
C. DFA Stress Test Methodologies and Practices
D. Estimating the Potential Impact on Regulatory Capital Levels and Capital Ratios
E. Controls, Oversight, and Documentation
F. Report to Supervisors
G. Public Disclosure of DFA Stress Tests

The agencies expect that the annual company-run stress tests required under the DFA stress test rules will be one component of the broader stress-testing activities conducted by $10–$50 billion companies. The DFA stress tests may not necessarily capture a company's full range of risks, exposures, activities, and vulnerabilities that have a potential effect on capital adequacy. For example, DFA stress tests may not account for regional concentrations and unique business models, or they may not fully cover the potential capital effects of interest rate risk or an operational risk event such as a regional natural disaster.[14] Consistent with the May 2012 stress testing guidance, a company is expected to consider the results of DFA stress testing together with other capital assessment activities to ensure that the company's material risks and vulnerabilities are appropriately considered in its overall assessment of capital adequacy. Finally, the DFA stress tests assess the impact of stressful

[9] *See* 77 FR 61238 (October 9, 2012) (OCC), 77 FR 62396 (October 12, 2012) (Board: Annual Company-Run Stress Test Requirements for Banking Organizations with Total Consolidated Assets over $10 Billion Other than Covered Companies), and 77 FR 62417 (October 15, 2012) (FDIC).

[10] Public Law 111–203, 124 Stat. 1376 (2010). Each entity that meets the applicability criteria must conduct a separate stress test and provide a separate submission. For example, both a bank holding company between $10–50 billion in assets and its subsidiary bank with between $10–50 billion in assets must conduct a separate stress test; however, if a subsidiary bank of a $10–50 billion bank holding company has $10 billion or less in assets then it does not need to conduct a DFA stress test.

[11] For the OCC, the term ''company'' is used in this guidance to refer to a banking organization that qualifies as a ''covered institution'' under the OCC Annual Stress Test Rule. 12 CFR 46.2. For the Board, the term ''company'' is used in this guidance to refer to state member banks, bank holding companies, and savings and loan holding companies. 12 CFR 252.153. For the FDIC, the term ''company'' is used in this guidance to refer to insured state nonmember banks and insured state savings associations that qualifies as a ''covered bank'' under the FDIC Annual Stress Test Rule. 12 CFR 325.202.

[12] 77 FR 29458, ''Supervisory Guidance on Stress Testing for Banking Organizations With More Than $10 Billion in Total Consolidated Assets,'' (May 17, 2012).

[13] As indicated in the DFA stress test final rules, the agencies also plan to issue supervisory guidance for companies with at least $50 billion in total assets. Consistent with the approach taken in the DFA stress test final rules, the agencies expect the guidance for companies with at least $50 billion to contain standards that are comparable or elevated in all areas.

[14] For purposes of this guidance, the term ''concentrations'' refers to groups of exposures and/or activities that have the potential to produce losses large enough to bring about a material change in a banking organization's risk profile or financial condition.

outcomes on capital adequacy, and are not intended to measure the adequacy of a company's liquidity in the stress scenarios.

## III. Annual Tests Conducted by Companies

### A. DFA Stress Test Timelines

**Rule Requirement: A company must conduct a stress test over a nine-quarter planning horizon based on data as of September 30 of the preceding calendar year.**[15]

Stress test projections are based on exposures with the as-of date of September 30 and extend over a nine-quarter planning horizon that begins in the quarter ending December 31 of the same year and ends with the quarter ending December 31 two years later.[16] For example, a stress test beginning in the fall of 2013 would use an as-of date of September 30, 2013, and involve quarterly projections of losses, PPNR, balance sheet, risk-weighted assets, and capital beginning on December 31, 2013 of that year and ending on December 31, 2015. In order to project quarterly provisions, a company would need to estimate the adequate level of the allowance for loan and lease losses (''ALLL'') to support remaining credit risk at the end of each quarter—including the final quarter—which may require additional projections of credit losses beyond 2015 to ensure the ALLL is consistent with Generally Accepted Accounting Principles (GAAP).

### B. Scenarios for DFA Stress Tests

**Rule Requirement: A company must use the scenarios provided annually by its primary Federal financial regulatory agency to assess the potential impact of the scenarios on its consolidated earnings, losses, and capital.**[17]

Under the DFA stress test rules, $10–50 billion companies must assess the potential impact of a minimum of three macroeconomic scenarios—baseline, adverse, and severely adverse—provided by their primary supervisor on their consolidated losses, revenues, balance sheet (including risk-weighted assets), and capital. The rule defines the three scenarios as follows:

- *Baseline scenario* means a set of conditions that affect the U.S. economy or the financial condition of a company that reflect the consensus views of the economic and financial outlook.
- *Adverse scenario* means a set of conditions that affect the U.S. economy or the financial condition of a company that are more adverse than those associated with the baseline scenario and may include trading or other additional components.
- *Severely adverse scenario* means a set of conditions that affect the U.S. economy or the financial condition of a company that overall are more severe than those associated with the adverse scenario and may include trading or other additional components.

The agencies will provide a description of the supervisory scenarios to companies no later than November 15 each calendar year. The scenarios provided by the agencies are not forecasts but rather are hypothetical scenarios that companies will use to assess their capital strength in baseline and stressed economic and financial conditions. Companies should apply each scenario across all business lines and risk areas so that they can assess the effect of a common scenario on the entire enterprise, though the effect of the given scenario on different business lines and risks may vary.

The agencies believe that a uniform set of supervisory scenarios is necessary to provide a basis for comparison across companies. However, a company is not required to use all of the variables provided in the scenario, if those variables are not relevant or appropriate to the company's line of business. In addition, a company may, but is not required to, use additional variables beyond those provided by the agencies. For example, a company may decide to use a regional unemployment rate to improve the robustness of its stress test projections. When using additional variables, companies should ensure that the paths of such variables (including their timing) are consistent with the general economic environment assumed in the supervisory scenarios. Any use of additional variables should be well supported and documented.

In addition, a company may choose to project the paths of variables beyond the timeframe of the supervisory scenarios, if a longer horizon is necessary for the company's stress testing methodology. For example, a company may project the unemployment rate for additional quarters in order to calculate inputs to its end-of-horizon ALLL or to estimate the projected value of certain types of securities under the scenario.

Companies may use third-party vendors to assist in the development of additional variables based on the supervisory stress scenarios. In such instances, consistent with existing supervisory expectations,[18] companies should understand the third-party analysis used to develop additional variables, including the potential limitations of such analysis as it relates to stress tests, and be able to challenge key assumptions. Companies should also ensure that vendor-supplied variables they use are relevant for and relate to company-specific characteristics.

### C. DFA Stress Test Methodologies and Practices

**Rule Requirement: In conducting a stress test, for each quarter of the planning horizon, a company must estimate the following for each required scenario: losses, pre-provision net revenue, provision for loan and lease losses, and net income.**[19]

As noted above, companies must identify and determine the impact on capital from the supervisory scenarios, as represented through the supervisory scenario variables and any additional variables chosen by the company. A company's estimation processes should reasonably capture the relationship between the assumed scenario conditions and the projected impacts and outcomes to the company. The agencies expect that the specific methodological practices used by companies to produce the estimates may vary across organizations.

Supervisors generally expect that all banking organizations, as part of overall safety and soundness, will continue to enhance their risk management practices. Accordingly, a $10–50 billion company's DFA stress testing practices should evolve and improve over time. In addition, DFA stress testing practices for $10–50 billon companies should be commensurate with each company's size, complexity, and sophistication. This means that, generally, larger or more sophisticated companies should employ not just the minimum expectations, but the more advanced practices described in this guidance.

The remainder of this section outlines key practices that all $10–50 billion companies should incorporate into their methodologies for estimating losses, PPNR, PLLL, and net income. It begins with general expectations that apply across various types of estimation methodologies, and then provides additional expectations for specific areas, such as loss estimation, revenue

[15] 12 CFR 46.5 (OCC); 12 CFR 252.154 (Board); 12 CFR 325.204 (FDIC).

[16] Planning horizon means the period of at least nine quarters, beginning with the quarter ending December 31, over which the relevant stress test projections extend.

[17] 12 CFR 46.6 (OCC); 12 CFR 252.154 (Board); 12 CFR 325.204 (FDIC).

[18] ''Supervisory Guidance on Model Risk Management,'' OCC 2011–12, or ''Guidance on Model Risk Management,'' Federal Reserve SR 11–7, April 4, 2011.

[19] 12 CFR 46.6 (OCC); 12 CFR 252.155(a)(1) (Board); 12 CFR 325.205(a)(1) (FDIC).

estimation, and balance sheet projections. In making projections, companies should make conservative assumptions about management responses in the stress tests, and should include only those responses for which there is substantial support. For example, companies may account for hedges that are already in place as potential mitigating factors against losses but should be conservative in making assumptions about potential future hedging activities and not necessarily anticipate that actions taken in the past could be taken under the supervisory scenarios.

*1. Data Sources*

Companies are expected to have appropriate management information systems and data processes that enable them to collect, sort, aggregate, and update data and other information efficiently and reliably within business lines and across the company for use in DFA stress tests. Data used for DFA stress tests should be reliable and generally consistent across time.

In cases where a company may not currently have a full cycle of historical data or data in sufficient granularity on which to base its analyses, it may use an alternative data source, such as a data history drawn from other organizations of demonstrably comparable market presence, concentrations, and risk profile (for example, regulatory reporting or vendor-supplied data), as a proxy for its own risk profile and exposures. Companies with limited internal data should develop specific strategies to accumulate the data necessary to improve their estimation practices over time, as having internal data relevant to current exposures generally improves loss projections and provides a better basis for assessment of those projections.

Over the long term, companies may continue to use such proxy data to benchmark the estimates produced using internal data or to augment any gaps in internal data (for example, if a company is moving into a new business area). However, companies should use proxy data cautiously, as these data may not adequately represent a company's own exposures, business activities, underwriting, and risk characteristics.

Even when a company has extensive historical data, it should look beyond the assumptions based on or embedded in those historical data. Companies should challenge conventional assumptions to ensure that a company's stress test is not constrained by its own past experience. This is particularly important when historical data does not contain stressful periods or if the specific characteristics of the scenarios are unlike the conditions in the available historical data.

*2. Data Segmentation*

To account for differences in risk profiles across various exposures and activities, companies should segment their portfolios and business activities into categories based on common or related risk characteristics. The company should select the appropriate level of segmentation based on the size, materiality, and risk of a given portfolio, provided there are sufficiently granular historical data available to allow for the desired segmentation. The minimum expectation is that companies will segment their portfolios and business activities using the categories listed in the $10–50 billion reporting form.[20] A company may use more granular segmentation than the $10–50 billion reporting form categories, particularly for more material, concentrated, or relatively riskier portfolios. For instance, a company could have a commercial loan portfolio containing loans to different industries with varying sensitivities to the scenario variables.

More advanced portfolio segmentation can take several forms, such as by product (construction versus income-producing real estate), industry, loan size, credit quality, collateral type, geography, vintage, maturity, debt service coverage, or loan-to-value (LTV) ratio. The company may also pool exposures with common or correlated risk characteristics, such as segmenting loans to businesses related to automobile production. Companies may also segment the portfolio according to geography, if they engage in activities in geographic areas with differing economic and financial characteristics. Such segmentation may be particularly valuable in situations where geographic areas show varying sensitivity to national economic and financial changes or where different scenario variables are necessary to capture key risks (such as projecting wholesale loan losses for regions with different industrial concentrations). For any type of segmentation that is more granular than the categories in the $10–50 billion reporting form, a company should maintain a map of internally defined segments to the $10–50 billion reporting form categories for accurate reporting.

Some companies' business line or risk assessment functions may already segment data with more granularity, i.e., beyond the $10–50 billion reporting form categories, which would support their DFA stress tests. Enhanced data details on borrower and loan characteristics may identify distinct and separate credit risks within a reporting category more effectively, and therefore yield a more accurate risk assessment than simply analyzing the larger aggregate portfolio. Greater segmentation, particularly for larger or riskier portfolios, may prove especially useful in estimating the risks to a portfolio under the adverse or severely adverse scenarios, because aggregated or less segmented portfolios may mask or distort the effect of potentially more stressful conditions on sub-portfolios. While $10–50 billion reporting form categories represent the minimum acceptable segmentation, larger or more sophisticated $10–50 billion companies should consider whether that level of segmentation is sufficient for the risk in their portfolios.

*3. Model risk management*

Companies should have in place effective model risk management practices, including validation, for all models used in DFA stress tests, consistent with existing supervisory guidance.[21] This includes ensuring that DFA stress test models are subject to appropriate standards for model development, implementation and use, model validation and model governance. Companies should ensure an effective challenge process by unbiased, competent, and qualified parties is in place for all models. There should also be sufficient documentation of all models, including model assumptions, limitations, and uncertainties. Senior management should have appropriate understanding of DFA stress test models to provide summary information to the company's board of directors that allows directors to assess and question methodologies and results.

Companies should ensure that their model risk management policies and practices generally apply to the use of vendor and third-party products as well. This includes all the standards and expectations outlined above and in existing supervisory guidance. If a company is using vendor models, senior management is expected to demonstrate knowledge of the model's design, intended use, applications, limitations

[20] For purposes of this guidance, the term ''$10–50 billion reporting form'' refers to the relevant reporting form a $10–50 billion company will use to report the results of its DFA stress tests to its primary Federal financial regulatory agency. For Federal Reserve-regulated companies the relevant reporting form is the FR Y–16, for OCC-regulated companies the relevant form is the OCC DFAST 10–50, and for FDIC-regulated companies the relevant form is the FDIC DFAST 10–50.

[21] OCC 2011–12 and FR SR 11–7.

and assumptions. For cases in which knowledge about a vendor or third-party model is limited for proprietary or other reasons, companies should take additional steps to ensure that they have an understanding of the model and can confirm it is functioning as intended. For example, companies may need to conduct more sensitivity analysis and benchmarking if information about a vendor model is limited for proprietary or other reasons. Additionally, a company should have as much in-house knowledge as possible in the event of vendor contract termination and should have contingency plans in cases where a vendor model is no longer available.

In cases where there are noted weaknesses or limitations in models or data used for stress tests, a company may choose to apply qualitative adjustments to the model or its output that are expert judgment-based. In most cases, however, estimation based solely or heavily reliant on qualitative adjustments should not be the main component of final loss estimates. Where qualitative adjustments are made, they should be consistently determined and applied, and subject to a well-defined process that includes a well-supported rationale, methodology, proper controls and strong documentation. When expert judgment is used on an ongoing basis, the estimates generated by such judgment should be subject to outcomes analysis, to assess performance equivalent to that used to evaluate a quantitative model. Large qualitative adjustments to the stress test results, especially on a repeated basis, may be indicative of a flawed process.

*4. Loss estimation*

For their DFA stress tests, companies are expected to have credible loss estimation practices that capture the risks associated with their portfolios, business lines, and activities. Credit losses associated with loan portfolios and securities holdings should be estimated directly and separately (as described in this section), whereas other types of losses should be incorporated into estimated PPNR (as described in the next section). Processes for loss estimation should be consistent, repeatable, transparent, and well documented. Companies should have a transparent and consistent approach for aggregating loss estimates across the enterprise. For example, inputs from all parts of the company should rely on common assumptions and map to specific loss categories of the $10–50 billion reporting form. A company should ensure that all enterprise loss estimation approaches reflect reasonably sufficient rigor and conservatism, and that, for loss estimation, the scenarios are applied consistently across the company.

Each company's loss estimation practices should be commensurate with the materiality of the risks measured and well supported by sound, empirical analysis. The practices may vary in complexity, depending on data availability and the materiality of a given portfolio. In general, loss estimation practices for credit risk are expected to be more advanced than other elements of the stress test, given that credit risk usually represents the largest potential risk to capital adequacy among $10–50 billion companies.

Companies should be mindful that the credit performance in a benign economic environment could differ markedly from that during more stressful periods, and the differences could become greater as the severity of stress increases. For example, companies that experienced low losses on their construction loans during a benign economic environment, due to the presence of interest reserves or other risk mitigating factors, may experience a sharp and rapid rise in losses in a scenario where market conditions deteriorate for a prolonged period. A company's decision whether to use consistent or different loss estimation processes for various supervisory scenarios would depend on the sensitivity of a company's loss estimation process to a given scenario.

A company may use a consistent process for loss estimation for all scenarios if that process is sufficiently sensitive to the severity of each scenario. Alternately, a company may use different loss estimation processes for different scenarios if the process it uses for the baseline scenario does not adequately capture the sensitivity of loss estimates to adverse and severely adverse scenarios. For example, a company may use its budgeting process for its baseline loss projections, if appropriate, but it should use a different process for the adverse and severely adverse scenarios if its budgeting process does not capture the potential for sharply elevated losses during stressful conditions. Whatever processes a company chooses should be conditioned on each of the three macroeconomic scenarios provided by supervisors.

Companies may choose loss estimation processes from a range of available methods, techniques, and levels of granularity, depending on the type and materiality of a portfolio, and the type and quality of data available. For instance, some companies may choose to base their stress loss estimates on industry historical loss experience, provided that those estimates are consistent with the conditions in the supervisory scenarios. Companies should choose a method that best serves the structure of their credit portfolios, and they may choose different methods for different portfolios (for example, wholesale versus retail). Furthermore, companies may use multiple methods to estimate losses on any given credit portfolio, and investigate different methods before settling on a particular approach or approaches. Regardless of whether a company uses historical loss experience or a more sophisticated modeling technique to estimate losses in a given scenario, the company should verify that resulting loss estimates are appropriately conditioned on the scenario, and any assumptions used are well understood and documented.

In estimating losses based on historical experiences, companies should ensure that historical loss experience contains at least one period when losses were substantially elevated and revenues substantially reduced, such as the downturn of a credit cycle. In addition, companies should ensure that any historical loss data used are consistent with the company's current exposures and condition. This could occur, for instance, if a company has shifted the proportion of its commercial lending from large corporations to smaller businesses, and the shift is not appropriately reflected in its historical loss data. If neither a company's own data history nor industry loss data include periods of stress comparable to the supervisory adverse or severely adverse scenario, the company should make reasonable, conservative assumptions based on available data.

Companies may choose to estimate credit losses at an aggregate level, at a loan-segment level, or at a loan-by-loan level. Aggregate approaches generally involve estimating loan losses for portfolios of loans, such as the $10–50 billion reporting form categories or more granular categories. Loan segmentation approaches group individual loans into segments or pools of obligors with similar risk characteristics to estimate losses. For example, individual 30-year fixed-rate mortgage loans may be pooled into one segment, and 5-year adjustable-rate mortgages (ARMs) into another segment, each to be modeled separately based on the balance, loss, and default history in that loan segment. Loan segments can also be determined based on additional risk characteristics, such as credit score, LTV ratio, borrower location, and payment status. Finally, loan-level approaches estimate losses

for each loan or borrower and aggregate those estimates to arrive at portfolio-level losses.

Some of the more commonly used modeling techniques for estimating loan losses include net charge-off models, roll-rate models, and transition matrices. Net charge-off models typically estimate the net charge-off rate for a given portfolio, based on the historical relationship between the net charge offs and relevant risk factors, including macroeconomic variables. Roll-rate models generally estimate the rate at which loans that are current or delinquent in a given quarter roll into delinquent or default status in the next quarter, conditioning such estimates on relevant risk factors. Transition matrices estimate the probability that risk ratings on loans could change from quarter to quarter and observe how transition rates differ in stressful periods compared with less stressful or baseline periods. Some companies may also use an expected loss approach, where the probability of default, loss given default, and exposure at default are estimated for individual loans, conditioning such estimates on each loan or portfolio risk characteristics and the economic scenario. Companies can benefit from exploring different modeling approaches, giving due consideration to cost effectiveness and with the understanding that more sophisticated methodologies will not necessarily prove more practicable or robust.

Loss estimation practices should be commensurate with the overall size, complexity and sophistication of the company, as well as with individual portfolios, to ensure they fully capture a company's risk profile. Accordingly, smaller, less sophisticated $10–50 billion companies may employ simpler loss estimation practices that rely on industry historical loss experience at a higher level of aggregation. On the other hand, larger or more sophisticated $10–50 billion companies should consider more advanced loss estimation practices that identify the key drivers of losses for a given portfolio, segment, or loan, determine how those drivers would be affected in supervisory scenarios, and estimate resulting losses.

Loss projections should include projections of other-than-temporary impairments (OTTI) for securities both held for sale and held to maturity. OTTI projections should be based on positions as of September 30 and should be consistent with the supervisory scenarios and standard accounting treatment. Companies should ensure that their securities loss estimation practices, including definitions of loss used, remain current with regulatory and accounting changes.

*5. Pre-provision net revenue estimation*

The projection of potential revenues is a key element of a stress test. For the DFA stress test, companies are required to project PPNR over the planning horizon for each supervisory scenario.[22] Companies should estimate PPNR at a level at least as granular as the components outlined in the $10–50 billion reporting form. Companies should be mindful that revenue patterns could differ markedly in baseline versus stress periods, and should therefore not make assumptions that revenue streams will remain the same or follow similar paths across all scenarios. In estimating PPNR, companies should consider, among other things, how potentially higher nonaccruals, increased collection costs, and changes in funding sources during the adverse and severely adverse scenarios could affect PPNR. Companies should ensure that PPNR projections are generally consistent with projections of losses, the balance sheet, and risk-weighted assets. For example, if a company projects that loan losses would be reduced because of declining loan balances under a severely adverse scenario, PPNR would also be expected to decline under the same scenario due to the decline in interest income. Companies should ensure transparency and appropriate documentation of all material assumptions related to PPNR.

There are various ways to estimate PPNR under stress scenarios and companies are not required to use any specific method. For example, companies may project each of three main components of PPNR (net interest income, non-interest income, and non-interest expense) or sub-components of PPNR (e.g., interest income or fee income), on an aggregate level for the entire company or by business line. Companies may base their PPNR estimates on internal or industry historical experience, or use a more sophisticated model-based approach to project PPNR. For example, some companies may project PPNR based on a historical relationship between PPNR or broad components of PPNR and macroeconomic variables. In those instances, companies may use the level of PPNR or the ratio of PPNR to a relevant balance sheet measure, such as assets or loans. Some companies may use a more granular breakout of PPNR (for example, interest income on loans), identify relevant economic variables (for example, interest rates), and employ models based on historical data to project PPNR. Some companies may use their asset-liability management models to project some components of PPNR, such as net interest income.

A company may estimate the stressed components of PPNR based on its own or industry-wide historical income and expense experience, particularly during the early development of a company's stress testing practices. When using its own history, a company should ensure that the data include at least one stressful period; when using industry data, a company should ensure that such data are relevant to its portfolios and businesses and appropriately reflect potential PPNR under each supervisory scenario. If neither its own data nor industry data include the period of stress that is comparable to the supervisory adverse or severely adverse scenario, a company should make conservative assumptions, based on available data, and appropriately adjust its historical PPNR data downward in its stressed estimate. A company that has been experiencing merger activity, rapid growth, volatile revenues, or changing business models should rely less on its own historical experience, and generally make conservative assumptions.

Smaller or less sophisticated $10–50 billion companies may employ PPNR estimation approaches that project the three main components of PPNR at the aggregate, company-wide level based on industry experience. Larger or more sophisticated $10–50 billion companies should consider PPNR estimation practices that more fully capture potential risks to their business and strategy by collecting internal revenue data, estimating revenues within specific business lines, exploring more advanced techniques that identify the specific drivers of revenue, and analyzing how the supervisory scenarios affect those revenue drivers. Whatever process a company chooses to employ, projected revenues and expenses should be credible and reflect a reasonable translation of expected outcomes consistent with the key scenario variables.

In addition to the credit losses associated with loan portfolios and securities holdings, described in the previous section, that should be estimated directly and separately, companies may determine that other types of losses could arise under the supervisory scenarios. These other types of losses should be included in projections of PPNR to the extent they would arise under the specified scenario

[22] The DFA stress test rules define PPNR as net interest income plus non-interest income less non-interest expense. Non-operational or non-recurring income and expense items should be excluded.

conditions. For example, any trading losses arising from the scenario conditions should be included in the non-interest income component of PPNR. As another example, companies should estimate under the non-interest expense component of PPNR any losses associated with requests by mortgage investors—including both government-sponsored enterprises as well as private-label securities holders—to repurchase loans deemed to have breached representations and warranties, or with investor litigation that broadly seeks damages from companies for losses.

Companies with material representation and warranty risk may consider a range of legal process outcomes, including worse than expected resolutions of the various contract claims or threatened or pending litigation against a company and against various industry participants. Additionally, in estimating non-interest income, companies with significant mortgage servicing operations should consider the effect of the supervisory scenarios on revenue and expenses related to mortgage servicing rights and the associated impact to regulatory capital.

PPNR estimates should also include any operational losses that a company estimates based on the supervisory scenarios provided. Companies should address operational risk in their PPNR projections if such events are related to the supervisory scenarios provided, or if there are pending related issues, such as ongoing litigation, that could affect losses or revenues over the planning horizon.

*6. Balance sheet and risk-weighted asset projections*

A company is expected to project its balance sheet and risk-weighted assets for each of the supervisory scenarios. In doing so, these projections should be consistent with scenario conditions and the company's prior history of managing through the different business environments, especially stressful ones. For example, if a company has reduced its business activity and balance sheet during past periods of stress or if it has contingent exposures, that should be taken into consideration. The projections of the balance sheet and risk-weighted assets should be consistent with other aspects of stress test projections, such as losses and PPNR. In addition, balance sheet and risk-weighted asset projections should remain current with regulatory and accounting changes.

Companies may use a variety of methods to project balance sheet and risk-weighted assets. In certain cases, it may be appropriate for a company to use simpler approaches for balance sheet and risk-weighted asset projections, such as a constant-portfolio assumption. Alternatively, a company may rely on estimates of changes in balance sheet and risk-weighted assets based on their own or industry-wide historical experience, provided that the internal or external historical balance sheet and risk-weighted asset experience contains stressful periods. As in the case of loss estimation and PPNR, using industry-wide data might be more appropriate when internal data lack sufficient history, granularity, or observations from stressful periods; however, companies should take caution when using the industry data and provide appropriate documentation for all material assumptions.

In stress scenarios, companies should justify major changes in the composition of risk-weighted assets, for example, based on assumptions about a company's strategic direction, including events such as material sales, purchases, or acquisitions. Furthermore, companies should be mindful that any assumptions about reductions in business activity that would reduce its balance sheet and risk-weighted assets over the planning horizon (such as tightened underwriting) are also likely to reduce PPNR. Such assumptions should also be reasonable in that they do not substantially alter the company's core businesses and earnings capacity. Companies should document and explain key underlying assumptions, as appropriate.

Some companies may choose to employ more advanced, model-based approaches to project balance sheet and risk-weighted assets. For example, a company may project outstanding balances for assets and liabilities based on the historical relationship between those balances and macroeconomic variables. In other cases, a company could project certain components of the balance sheet, for example, based on projections for originations, pay-downs, drawdowns, and losses for its loan portfolios under each scenario. Estimated prepayment behavior conditioned on the relevant scenario and the maturity profile of the asset portfolio could inform balance projections.

*7. Estimates for immaterial portfolios*

Although stress testing should be applied to all exposures as described above, the same level of rigor and analysis may not be necessary for lower-risk, immaterial, portfolios. Portfolios considered immaterial are those that would not represent a consequential effect on capital adequacy under any of the scenarios provided. For such portfolios, it may be appropriate for a company to use a less sophisticated approach for its stress test projections, provided that the results of that approach are conservative and well documented. For example, estimating losses under the supervisory scenarios for a small portfolio of municipal securities may not involve the same sophistication as a larger portfolio of commercial mortgages.

*8. Projections for quarterly provisions and ending allowance for loan and lease losses*

The DFA stress test rules require companies to project quarterly PLLL. Companies are expected to project PLLL based on projections of quarterly loan and lease losses and the appropriate ALLL balance at each quarter-end for each scenario. In projecting PLLL, companies are expected to maintain an adequate loan-loss reserve through the planning horizon, consistent with supervisory guidance, accounting standards, and a company's internal practice. Estimated provisions should recognize the potential need for higher reserve levels in the adverse and severely adverse scenarios, since economic stress leads to poorer loan performance. The ALLL at the end of the planning horizon should be consistent with GAAP, including any losses projected beyond the nine-quarter horizon.

*9. Projections for quarterly net income*

Under the DFA stress test rules, companies must estimate projected quarterly net income for each scenario. Net income projections should be based on loss, revenue, and expense projections described above. Companies should also ensure that tax estimates, including deferred taxes and tax assets, are consistent with relevant balance sheet and income (loss) assumptions and reflect appropriate accounting, tax, and regulatory changes.

**D. Estimating the Potential Impact on Regulatory Capital Levels and Capital Ratios**

**Rule Requirement: In conducting a stress test, for each quarter of the planning horizon a company must estimate: the potential impact on regulatory capital levels and capital ratios (including regulatory capital ratios and any other capital ratios specified by the primary supervisor), incorporating the effects of any capital actions over the planning horizon and maintenance of an allowance for loan**

**losses appropriate for credit exposures throughout the planning horizon.**[23]

In the DFA stress test rules, companies are required to estimate the impact of supervisory scenarios on capital levels and ratios, based on the estimates of losses, PPNR, loan and lease provisions, and net income, as well as projections of the balance sheet and risk-weighted assets. Companies must estimate projected quarterly regulatory capital levels and regulatory capital ratios for each scenario. The agencies expect companies' post-stress capital ratios under the adverse and severely adverse scenarios will be lower than under the baseline scenario. Projected capital levels and ratios should reflect applicable regulations and accounting standards for each quarter of the planning horizon.

In particular, in July 2013, the Board and OCC issued a final rule and the FDIC issued an interim final rule regarding regulatory capital requirements for banking organizations. The final rules revise the criteria for regulatory capital, introduce a new minimum common equity tier 1 capital requirement of 4.5 percent of risk-weighted assets, as well as a minimum supplementary leverage ratio requirement of 3 percent that would apply to companies subject to the advanced approaches capital rules. The new minimum capital requirements would be phased in over a transition period. The final rules will take effect beginning on January 1, 2014, for banking organizations subject to the agencies' advanced approaches rules (other than savings and loan holding companies) and on January 1, 2015, for all other banking organizations. Compliance with the supplementary leverage ratio for companies subject to the advanced approaches rules will be required starting in 2018. $10–50 billion companies should measure their regulatory capital levels and regulatory capital ratios for each quarter in accordance with the rules that would be in effect during that quarter in accordance with the transition arrangements set forth in the final rules.

**Rule Requirement: A bank holding company or savings and loan holding company is required to make the following assumptions regarding its capital actions over the planning horizon:**

**1. For the first quarter of the planning horizon, the bank holding company or savings and loan holding company must take into account its actual capital actions as of the end of that quarter.**

**2. For each of the second through ninth quarters of the planning horizon, the bank holding company or savings and loan holding company must include in the projections of capital:**

**(a) Common stock dividends equal to the quarterly average dollar amount of common stock dividends that the company paid in the previous year (that is, the first quarter of the planning horizon and the preceding three calendar quarters);**

**(b) Payments on any other instrument that is eligible for inclusion in the numerator of a regulatory capital ratio equal to the stated dividend, interest, or principal due on such instrument during the quarter; and**

**(c) An assumption of no redemption or repurchase of any capital instrument that is eligible for inclusion in the numerator of a regulatory capital ratio.**[24]

In their DFA stress tests, bank holding companies and savings and loan holding companies are required to calculate pro forma capital ratios using a set of capital action assumptions based on historical distributions, contracted payments, and a general assumption of no redemptions, repurchases, or issuances of capital instruments. A holding company should also assume it will not issue any new common stock, preferred stock, or other instrument that would count in regulatory capital in the second through ninth quarters of the planning horizon, except for any common issuances related to expensed employee compensation.

While holding companies are required to use specified capital action assumptions, there are no specified capital actions for banks and thrifts. A bank or thrift should use capital actions that are consistent with the scenarios and the company's internal practices in their DFA stress tests. For banks and thrifts, projections of dividends that represent a significant change from practice in recent quarters, for example to conserve capital in a stress scenario, should be evaluated in the context of corporate restrictions and board decisions in historical stress periods. Additionally, a holding company should consider that it is required to use certain capital assumptions that may not be the same as the assumptions used by its bank subsidiaries. Finally, any assumptions about mergers or acquisitions, and other strategic actions should be well documented and should be consistent with past practices of management and the board during stressed economic periods. Should the stress-test submissions for the bank or thrift and its holding company differ in terms of projected capital actions (e.g., different dividend payout assumptions during the stress test horizon for the bank versus the holding company) as a result of the different requirements of the DFA stress test rules, the institution should address such differences in the narrative portion of their submissions.

**E. Controls, Oversight, and Documentation**

**Rule requirement: Senior management must establish and maintain a system of controls, oversight and documentation, including policies and procedures, that are designed to ensure that its stress testing processes are effective in meeting the requirements of the DFA stress test rule. These policies and procedures must, at a minimum, describe the company's stress testing practices and methodologies, and describe the processes for validating and updating practices and methodologies consistent with applicable laws, regulations, and supervisory guidance. The board of directors, or a committee thereof, of a company must approve and review the policies and procedures of the stress testing processes as frequently as economic conditions or the condition of the company may warrant, but no less than annually.**[25]

Pursuant to the DFA stress test requirement, a company must establish and maintain a system of controls, oversight, and documentation, including policies and procedures that apply to all of its DFA stress test components. This system of controls, oversight, and documentation should be consistent with the May 2012 stress testing guidance. Policies and procedures for DFA stress tests should be comprehensive, ensure a consistent and repeatable process, and provide transparency regarding a company's stress testing processes and practices for third parties. The policies and procedures should provide a clear articulation of the manner in which DFA stress tests should be conducted, roles and responsibilities of parties involved (including any external resources), and describe how DFA stress test results are to be used. These policies and procedures also should be integrated into other policies and procedures for the company. The board (or a committee thereof) must approve

[23] 12 CFR 46.6(a)(2) (OCC); 12 CFR 252.155(a)(2) (Board); 12 CFR 325.205(a)(2) (FDIC).

[24] 12 CFR 252.155(b).

[25] 12 CFR 46.5(d) (OCC); 12 CFR 252.155(c) (Board); 12 CFR 325.205(b) (FDIC).

and review the policies and procedures for DFA stress tests to ensure that policies and procedures remain current, relevant, and consistent with existing regulatory and accounting requirements and expectations as frequently as economic conditions or the condition of the company may warrant, but no less than annually.

Senior management must establish policies and procedures for DFA stress tests and should ensure compliance with those policies and procedures, assign competent staff, oversee stress test development and implementation, evaluate stress test results, and review any findings related to the functioning of stress testing processes. Senior management should ensure that weaknesses—as well as key assumptions, limitations and uncertainties—in DFA stress testing processes and results are identified, communicated appropriately within the organization, and evaluated for the magnitude of impact, taking prompt remedial action where necessary. Senior management, directly and through relevant committees, should also be responsible for regularly reporting to the board regarding DFA stress test developments (including the process to design tests and augment or map supervisory scenarios), DFA stress test results, and compliance with a company's stress testing policy.

A company's system of documentation should include the methodologies used, data types, key assumptions, and results, as well as coverage of the DFA stress tests (including risks and exposures included). For any models used, documentation should include sufficient detail about design, inputs, assumptions, specifications, limitations, testing, and output. In general, documentation on methodologies used should be consistent with existing supervisory guidance.

Companies should ensure that other aspects of governance over methodologies used for DFA stress tests are appropriate, consistent with the May 2012 stress testing guidance. Specifically, companies should have policies, procedures, and standards for any models used. Effective governance would include validation and effective challenge for any assumptions or models used, and a description of any remedial steps in cases where models are not validated or validation identifies substantial issues. A company should ensure that internal audit evaluates model risk management activities related to DFA stress tests, which should include a review of whether practices align with policies, as well as how deficiencies are identified, monitored, and addressed.

**Rule requirements: The board of directors and senior management of the company must receive a summary of the results of the stress test. The board of directors and senior management of a company must consider the results of the stress test in the normal course of business, including, but not limited to, the company's capital planning, assessment of capital adequacy, and risk management practices.**[26]

A company's board of directors is ultimately responsible for the company's DFA stress tests. Board members must receive summary information about DFA stress tests, including results from each scenario. The board or its designee should actively evaluate and discuss this information, ensuring that the DFA stress tests appropriately reflect the company's risk appetite, overall strategy and business plans, overall stress testing practices, and contingency plans, directing changes where appropriate. The board should ensure it remains informed about critical review of elements of the DFA stress tests conducted by senior management or others (such as internal audit), especially regarding key assumptions, uncertainties, and limitations.

All $10–50 billion companies must consider the role of stress testing results in normal business including in the capital planning, assessment of capital adequacy, and risk management practices of the company. A company should document the manner in which DFA stress tests are used for key decisions about capital adequacy, including capital actions and capital contingency plans. The company should indicate the extent to which DFA stress tests are used in conjunction with other capital assessment tools, especially if the DFA stress tests may not necessarily capture a company's full range of risks, exposures, activities, and vulnerabilities that have the potential to affect capital adequacy. Importantly, a company should ensure that its post-stress capital results are aligned with its internal capital goals and risk appetite. For cases in which post-stress capital results are not aligned with a company's internal capital goals, senior management should provide options it and the board would consider to bring them into alignment.

### F. Report to Supervisors

**Rule Requirement: A company must report the results of the stress test to its primary supervisor and to the Board of Governors by March 31, in the manner and form prescribed by the agency.**[27]

All $10–50 billion companies must report the results of their DFA company-run stress tests on the $10–50 billion reporting form. This report will include a company's quantitative projections of losses, PPNR, balance sheet, risk-weighted assets, ALLL, and capital on a quarterly basis over the duration of the scenario and planning horizon. In addition to the quantitative projections, companies are required to submit qualitative information supporting their projections. The report of the stress test results must include, under each scenario: a description of the types of risks included in the stress test, a description of the methodologies used in the stress test, an explanation of the most significant causes for the changes in regulatory capital ratios, and any other information required by the agencies. In addition, the agencies may request supplemental information, as needed.

If significant errors or omissions are identified subsequent to filing, a company must file an amended report. For additional information, see the instructions provided with the reporting templates.

### G. Public Disclosure of DFA Test Results

**Rule Requirement: A company must disclose a summary of the results of the stress test in the period beginning on June 15 and ending on June 30.**[28]

Under the DFA stress test rules, a company must make its first DFA stress test-related public disclosure between June 15 and June 30, 2015, by disclosing summary results of its annual DFA stress test, using September 30, 2014, financial statement data. The regulation requires holding companies to include in their public disclosure a summary of the results of the stress tests conducted by any subsidiaries subject to DFA stress testing.[29] A bank can satisfy this public disclosure requirement by including a summary of the results of its stress test in its parent company's public disclosure (on the same timeline); however the agencies can require a separate disclosure if the parent company's public disclosure does not adequately capture the impact of the scenarios on the bank.

The summary of the results of the stress test, including both quantitative

[26] 12 CFR 46.5(d) and 46.6(c)(2) (OCC); 12 CFR 252.155(c)(3) (Board); 12 CFR 325.205(b)(2) and (3) (FDIC).

[27] 12 CFR 46.7 (OCC); 12 CFR 252.156 (Board); 12 CFR 325.206 (FDIC).

[28] 12 CFR 46.8 (OCC); 12 CFR 252.157 (Board); 12 CFR 325.207 (FDIC).

[29] 12 CFR 252.157(b).

and qualitative information, should be included in a single release on a company's Web site, or in any other forum that is reasonably accessible to the public.

Each bank or thrift must publish a summary of its stress tests results separate from the results of stress tests conducted at the consolidated level of its parent holding company, but the company may include this summary with its holding company's public disclosure. Thus, a bank or thrift with a parent holding company that is required to conduct a company-run DFA stress test under the Federal Reserve Board's DFA stress test rules will have satisfied its public disclosures requirement when the parent holding company discloses summary results of subsidiary's annual stress test in satisfaction of the requirements of the applicable regulations of the company's primary Federal regulator, unless the company's primary regulator determines that the disclosures at the holding company level does not adequately capture the potential impact of the scenarios on the capital of the companies.

A company must disclose, at a minimum, the following information regarding the severely adverse scenario:

a. A description of the types of risks included in the stress test;
b. A summary description of the methodologies used in the stress test;
c. Estimates of—
   Aggregate losses;
   PPNR;
   PLLL;
   Net income; and
   Pro forma regulatory capital ratios and any other capital ratios specified by the primary supervisor;
d. An explanation of the most significant causes for the changes in regulatory capital ratios; and
e. For bank holding companies and savings and loan holding companies: for a stress test conducted by an insured depository institution subsidiary of the bank holding company or savings and loan holding company pursuant to section 165(i)(2) of the Dodd-Frank Act, changes in regulatory capital ratios and any other capital ratios specified by the primary Federal financial regulatory agency of the depository institution subsidiary over the planning horizon, including an explanation of the most significant causes for the changes in regulatory capital ratios.

It should be clear in the company's public disclosure that the results are conditioned on the supervisory scenarios. Items to be publicly disclosed should follow the same definitions as those provided in the confidential report to supervisors. Companies should disclose all of the required items in a single public release, as it is difficult to interpret the quantitative results without the qualitative supporting information.

DIFFERENCES IN DFA STRESS TEST REQUIREMENTS FOR HOLDING COMPANIES VERSUS BANKS AND THRIFTS

| | Bank Holding Companies and Savings and Loan Holding Companies | Banks and Thrifts |
|---|---|---|
| Capital actions used for company-run stress tests. | Capital actions prescribed in Federal Reserve Board's DFA stress tests rules. Generally based on historical dividends, contracted payments, and no repurchases or issuances. | No prescribed capital actions. Banks and thrifts should use capital actions consistent with the scenario and their internal business practices. |
| Public disclosure of company-run stress tests .. | Disclosure must include information on stress tests conducted by subsidiaries subject to DFA stress tests. | Disclosure requirement met when parent company disclosure includes the required information on the bank or thrift's stress test results, unless the company's primary regulator determines that the disclosure at the holding company level does not adequately capture the potential impact of the scenarios on the capital of the company. |

Dated: July 25, 2013.

**Thomas J. Curry,**

*Comptroller of the Currency.*

By order of the Board of Governors of the Federal Reserve System, July 24, 2013.

**Robert deV. Frierson,**

*Secretary of the Board.*

Dated at Washington, DC, this 30th day of July, 2013.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 2013–18716 Filed 8–2–13; 8:45 am]

**BILLING CODE 4810–33–P; 6714–01–P; 6210–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2013–0561; Directorate Identifier 2013–NE–23–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Thielert Aircraft Engines GmbH Reciprocating Engines

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for all Thielert Aircraft Engines GmbH TAE 125–01 reciprocating engines. This proposed AD was prompted by a report of engine power loss due to engine coolant contaminating the engine clutch. The design of the engine allows the crankcase assembly opening to be susceptible to contamination from external sources. This proposed AD would require applying sealant to close the engine clutch housing (crankcase assembly) opening. We are proposing this AD to prevent in-flight engine power loss, which could result in loss of control of, and damage to, the airplane.

**DATES:** We must receive comments on this proposed AD by October 4, 2013.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *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:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• *Fax:* 202–493–2251.

For service information identified in this proposed AD, contact Thielert Aircraft Engines GmbH, Platanenstrasse 14 D–09350, Lichtenstein, Germany, phone: +49–37204–696–0; fax: +49–37204–696–55; email: *info@centurion-engines.com.* You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

## Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the Mandatory Continuing Airworthiness Information (MCAI), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (phone: 800–647–5527) is the same as the Mail address provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Frederick Zink, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7779; fax: 781–238 7199; email: *frederick.zink@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2013–0561; Directorate Identifier 2013–NE–23–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of the Web site, anyone can find and read the comments in any of our dockets, including, if provided, the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

## Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2013–0109, dated May 22, 2013 (referred to hereinafter as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> A power loss event was reported on an aeroplane equipped with a TAE 125–01 engine. The investigation results showed that the probable cause was contamination of the engine clutch by coolant spillage during the last maintenance operation. The contamination penetrated the clutch housing through an opening located under the coolant tank that was only closed by a not fluid-tight plastic cover.

You may obtain further information by examining the MCAI in the AD docket. The design of the engine allows the crankcase assembly opening to be susceptible to contamination from external sources. We are proposing this AD to prevent in-flight engine power loss, which could result in loss of control of, and damage to, the airplane.

## Relevant Service Information

Thielert Aircraft Engines GmbH has issued Service Bulletin (SB) No. TM TAE 125–0022, dated August 8, 2012. The SB describes procedures for applying sealant to close the engine clutch housing (crankcase assembly) opening.

## FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of Germany, and is approved for operation in the United States. Pursuant to our bilateral agreement with the European Community, EASA has notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design. This proposed AD would require applying sealant to close the engine clutch housing (crankcase assembly) opening.

## Costs of Compliance

We estimate that this proposed AD affects 140 engines installed on airplanes of U.S. registry. We also estimate that it would take about 2.5 hours per engine to comply with this proposed AD. The average labor rate is $85 per hour. Required parts cost about $110 per engine. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $45,150. Our cost estimate is exclusive of possible warranty coverage.

## Authority for This Rulemaking

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

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

## Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

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

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

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

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**Thielert Aircraft Engines GmbH:** Docket No. FAA–2013–0561; Directorate Identifier 2013–NE–23–AD.

**(a) Comments Due Date**

We must receive comments by October 4, 2013.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to all Thielert Aircraft Engines GmbH TAE 125–01 reciprocating engines.

**(d) Reason**

This AD was prompted by a report of engine power loss due to engine coolant contaminating the engine clutch. The design of the engine allows the crankcase assembly opening to be susceptible to contamination from external sources. We are issuing this AD to prevent in-flight engine power loss, which could result in loss of control of, and damage to, the airplane.

**(e) Actions and Compliance**

Unless already done, do the following actions.

(1) After the effective date of this AD at the next annual or 100-hour inspection, whichever comes first, apply sealant to close the engine clutch housing (crankcase assembly) opening.

(2) Thereafter, reapply sealant to the engine clutch housing (crankcase assembly) opening, whenever the sealant is found to be not liquid-tight, or is removed.

(3) Guidance on the sealant and application can be found in Thielert Aircraft Engines GmbH Service Bulletin No.TM TAE 125–0022, dated August 8, 2012.

**(f) Alternative Methods of Compliance (AMOCs)**

The Manager, Engine Certification Office, FAA, may approve AMOCs to this AD. Use the procedures found in 14 CFR 39.19 to make your request.

**(g) Related Information**

(1) For more information about this AD, contact Frederick Zink, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7779; fax: 781–238 7199; email: *frederick.zink@faa.gov.*

(2) Refer to European Aviation Safety Agency Airworthiness Directive 2013–0109, dated May 22, 2013, for related information. You may examine the AD on the Internet at *http://ad.easa.europa.eu/ad/2013–0109.*

(3) Thielert Aircraft Engines GmbH Service Bulletin No. TM TAE 125–0022, dated August 8, 2012, which is not incorporated by reference in this AD, can be obtained from Thielert Aircraft Engines GmbH, using the contact information in paragraph (g)(4) of this AD.

(4) For service information identified in this AD, contact Thielert Aircraft Engines GmbH, Platanenstrasse 14 D–09350, Lichtenstein, Germany, telephone: +49–37204–696–0; fax: +49–37204–696–55; email: *info@centurion-engines.com.* You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Issued in Burlington, Massachusetts, on July 25, 2013.

**Thomas A. Boudreau,**

*Acting Assistant Manager, Engine & Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 2013–18797 Filed 8–2–13; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2013–0679; Directorate Identifier 2009–SW–015–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Eurocopter France (Eurocopter) Model Helicopters

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for Eurocopter Model AS350B, AS350BA, AS350B1, AS350B2, AS350B3, AS350C, AS350D, and AS350D1 helicopters. This proposed AD would require measuring the distance between the end of the main rotor collective pitch lever (collective) locking stud (locking stud) and the locking strip and repairing the locking stud if the clearance is insufficient. This proposed AD is prompted by a report that insufficient distance between the locking stud and the locking strip may cause the collective to become inadvertently locked in the low pitch (low) position. The proposed actions are intended to prevent the collective from becoming inadvertently locked in the low position and subsequent loss of control of the helicopter.

**DATES:** We must receive comments on this proposed AD by October 4, 2013.

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

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

**Examining the AD Docket**

You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt. For service information identified in this proposed AD, contact American Eurocopter Corporation, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.eurocopter.com/techpub.* You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

**FOR FURTHER INFORMATION CONTACT:** Robert Grant, Aviation Safety Engineer, Safety Management Group, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone 817–222–5110; email *robert.grant@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also

invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

**Discussion**

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD No. 2009–0019, dated February 3, 2009, to correct an unsafe condition for the Eurocopter Model AS350 helicopters. EASA advises that the clearance between the collective locking stud and the locking strip may be insufficient when the collective is positioned in the low pitch stop. During an autorotation test flight, the collective rubbed against the locking strip in the low pitch position. The rubbing was due to inadequate clearance and could result in the collective being inadvertently locked in the low pitch position.

**FAA's Determination**

These helicopters have been approved by the aviation authority of France and are approved for operation in the United States. Pursuant to our bilateral agreement with France, EASA, its technical representative, has notified us of the unsafe condition described in its AD. We are proposing this AD because we evaluated all known relevant information and determined that an unsafe condition is likely to exist or develop on other products of the same type design.

**Related Service Information**

Eurocopter issued Service Bulletin No. 67.00.37, Revision 2, dated December 2, 2008, originally issued on September 27, 2007, and also identified as modification (MOD) 073237, which contains procedures for replacing the locking stud on the collective levers with a new locking stud with higher wear resistance. The new locking stud is longer than the previous one and has reduced the distance between the locking stud and the locking strip. In some cases, the reduced distance is insufficient when the collective is positioned in the low pitch position causing the collective to lock in that position. As a result, Eurocopter has issued one Emergency Alert Service Bulletin (EASB), Revision 0, dated January 12, 2008, with two numbers. EASB No. 05.00.58 is for civil Model AS350B, BA, BB, B1, B2, B3, and D helicopters and military Model AS350L1 helicopters. EASB No. 05.00.35 is for military Model AS550A2, C2, C3, and U2 helicopters. The EASB specifies measuring to ensure a required minimum distance between the locking stud and the locking strip and specifies a repair solution in case the distance is insufficient. As a precaution, Eurocopter extended the measure and repair to helicopters with locking studs before MOD 073237. Eurocopter also revised Service Bulletin No. 67.00.37 to include these procedures.

**Proposed AD Requirements**

The proposed AD would require measuring the clearance between the collective locking stud and the locking strip. If insufficient clearance exists, corrective actions are defined based on the installed locking strip and locking stud designs. Corrective actions include restoring the original profile of certain locking strips and adjusting the length of certain collective locking studs.

**Differences Between This Proposed AD and the EASA AD**

The EASA AD does not apply to Model AS350C or AS350D1 helicopters, and the proposed AD would apply to these models because they have a similarly-designed collective pitch lock. The EASA AD applies to the Model AS350BB, and the proposed AD does not because that model does not have a U.S. type certificate. The proposed AD would require an initial inspection within 100 hours time-in-service, while the EASA AD requires this inspection ''after the last flight of the day.''

**Costs of Compliance**

We estimate that this proposed AD would affect 651 helicopters of U.S. Registry.

We estimate that operators may incur the following costs in order to comply with this AD. It would take 1 work hour to measure the clearance and repair the locking stud and locking strip at $85 per work hour. Required parts would cost $95 per helicopter. Based on these estimates, the total cost per helicopter would be $180, and the total cost for the fleet would be $117,180.

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

*For the reasons discussed, I certify this proposed regulation:*

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

We prepared an economic evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

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

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

**The Proposed Amendment**

Accordingly, under the authority delegated to me by the Administrator,

the FAA proposes to amend 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**Eurocopter France:** Docket No. FAA–2013–0679; Directorate Identifier 2009–SW–015–AD.

**(a) Applicability**

This AD applies to Eurocopter Model AS350B, AS350BA, AS350B1, AS350B2, AS350B3, AS350C, AS350D, AS350D1 helicopters, certificated in any category, without modification (MOD) 073175 installed; with MOD 073237 installed in accordance with Eurocopter Service Bulletin No. 67.00.37 Revision 0, dated September 27, 2007, or Revision 1, dated February 6, 2008; or with one of the following serial numbers: 3972, 3973, 3982, 3987, 4003, 4023, 4046, 4050, 4086, 4120, 4122, 4132, 4143, 4152, 4172, 4194, 4259, 4314, 4324, 4378, 4392, 4447, 4452, 4477, 4489, 4490, 4501, 4523, 4546, 4560, 4589, 4594, 4599, 4632, 4659, 4666, or 4671.

**(b) Unsafe Condition**

This AD defines the unsafe condition as the main rotor collective pitch lever (collective) locking stud (locking stud) inadvertently locking in the low pitch (low) position, which could result in subsequent loss of control of the helicopter.

**(c) Comments Due Date**

We must receive comments by October 4, 2013.

**(d) Compliance**

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

**(e) Required Actions**

(1) For helicopters with MOD 073237 installed, within 100 hours time-in-service (TIS):

(i) With the collective (item b) in the low position but not locked on the locking strip (item a), measure the distance between the end of the locking stud (item c) and the locking strip as indicated by dimension ''J'' in Figure 2 of Eurocopter Emergency Alert Service Bulletin No. 05.00.58, Revision 0, dated January 12, 2008 (EASB 05.00.58).

(ii) If the distance between the end of the locking stud and the locking strip is equal to or more than 3 millimeters (mm), no further action is required.

(iii) If the distance between the end of the locking stud and the locking strip is less than 3 mm and MOD 073175 is not installed, inspect to determine whether the grommet in the locking strip is seated against the console as shown in Figure 2 of the EASB.

(A) If the grommet is not seated against the console, restore the original profile of the locking strip by doing the following:

(*1*) Clamp the locking strip in a vice with soft jaws and apply load progressively to the locking strip to restore the original profile of the locking strip.

(*2*) With the collective in the low position but not locked on the locking strip, measure the distance between the end of the locking stud and the locking strip as indicated by dimension ''J'' in Figure 2 of the EASB.

(*3*) If the distance between the end of the locking stud and the locking strip is equal to or more than 3 mm, no further action is required.

(*4*) If the distance between the end of the locking stud and the locking strip is less than 3 mm, adjust the length of the locking stud and re-identify the locking stud by following the Accomplishment Instructions, paragraph 2.B.2.c., of the EASB, except you are not required to comply with paragraph 2.B.4 of the EASB.

(B) If the grommet is seated against the console, adjust the length of the locking stud and re-identify the locking stud by following the Accomplishment Instructions, paragraph 2.B.2.c, of the EASB, except you are not required to comply with paragraph 2.B.4 of the EASB.

(iv) If the distance between the end of the locking stud and the locking strip is less than 3 mm and MOD 073175 is installed, adjust the length of the locking stud and re-identify the locking stud by following the Accomplishment Instructions, paragraph 2.B.2.c., of the EASB, except you are not required to comply with paragraph 2.B.4 of the EASB.

(v) After adjusting the length of the locking stud in accordance with paragraph 2.B.2.c of the EASB, determine whether the distance between the end of the locking stud and the locking strip is equal to or more than 3 mm.

(A) If the distance between the end of the locking stud and the locking strip is equal to or more than 3 mm, no further action is required.

(B) If the distance between the end of the locking stud and the locking strip is less than 3 mm, do not approve the helicopter for return to service until the distance between the end of the locking stud and the locking strip is equal to or more than 3 mm.

(2) For helicopters without MOD 073237 installed, within 100 hours TIS:

(i) With the collective in the low position but not locked on the locking strip, measure the distance between the end of the locking stud and the locking strip as indicated by dimension ''J' in Figure 2 of the EASB.

(ii) If the distance between the end of the locking stud and the locking strip is equal to or more than 3 mm, no further action is needed.

(iii) If the distance between the end of the locking stud and the locking strip is less than 3 mm and MOD 073175 is not installed, inspect to determine whether the grommet in the locking strip is seated against the console as shown in Figure 2 of the EASB.

(A) If the grommet is not seated against the console, restore the original profile of the locking strip by doing the following:

*(1)* Clamp the locking strip in a vice with soft jaws and applying load progressively to the locking strip.

*(2)* With the collective in the low position, but not locked on the locking strip, measure the distance between the end of the locking stud and the locking strip as indicated by dimension ''J'' in Figure 2 of the EASB.

*(3)* If the distance between the end of the locking stud and the locking strip is equal to or more than 3 mm, no further action is required.

*(4)* If the distance between the end of the locking stud and the locking strip is less than 3 mm, do not approve the helicopter for return to service until the distance between the end of the locking stud and the locking strip is equal to or more than 3 mm.

(B) If the grommet is seated against the console, do not approve the helicopter for return to service until the distance between the end of the locking stud and the locking strip is equal to or more than 3 mm.

(iv) If the distance between the end of the locking stud and the locking strip is less than 3 mm and MOD 073175 is installed, do not approve the helicopter for return to service until the distance between the end of the locking stud and the locking strip is equal to or more than 3 mm.

(3) Repeat the measurement requirement in paragraphs (e)(1) or (e)(2) of this AD as applicable to your helicopter each time the collective, locking stud, or locking strip is replaced; each time the locking strip setting is readjusted; or at intervals not exceeding 660 hours time-in-service or 2 years, whichever occurs first.

**(f) Alternative Methods of Compliance (AMOCs)**

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

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

**(g) Additional Information**

(1) Eurocopter Emergency Alert Service Bulletin (EASB) No. 05.00.58, Revision 0, dated January 12, 2008, is co-published in one document with EASB No. 05.00.35, which is not incorporated by reference in this AD. Eurocopter Service Bulletin (SB) No. 67.00.21, Revision 1, dated June 21, 2006, and SB No. 67.00.37, Revision 2, dated December 2, 2008, which are not incorporated by reference, contain additional information about the subject of this AD.

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

may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

(3) The subject of this AD is addressed in European Aviation Safety Agency (EASA) AD No. 2009–0019, dated February 3, 2009. You may view the EASA AD at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2013–0679.

**(h) Subject**

Joint Aircraft Service Component (JASC) Code: 6710 Main Rotor Control.

Issued in Fort Worth, Texas, on July 26, 2013.

**Kim Smith,**

*Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 2013–18854 Filed 8–2–13; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2013–0670; Directorate Identifier 2013–NM–081–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; The Boeing Company Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 737–600, –700, –800, –900, and –900ER airplanes modified by particular supplemental type certificates (STC). This proposed AD was prompted by reports of cracks found during inspections of the in-flight entertainment system radome assembly. This proposed AD would require repetitive detailed inspections for cracks in the radome assembly, and replacement of the radome if necessary. We are proposing this AD to detect and correct cracks in the radome assembly, which could result in the radome (or pieces) separating from the airplane and striking the tail, and consequently reducing the controllability of the airplane.

**DATES:** We must receive comments on this proposed AD by September 19, 2013.

**ADDRESSES:** You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

For service information identified in this proposed AD, contact Live TV, 8900 Hangar Boulevard, Orlando, FL 32827; telephone 407–812–2600; fax 407–812–2526; Internet *http://www.livetv.net.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

### Examining the AD Docket

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

**FOR FURTHER INFORMATION CONTACT:** Barry Culler, Aerospace Engineer, Airframe Branch, ACE–117A, FAA, Atlanta Aircraft Certification Office (ACO), 1701 Columbia Avenue, College Park, GA 30337; phone: 404–474–5546; fax: 404–474–5605; email: *william.culler@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2013–0670; Directorate Identifier 2013–NM–081–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

### Discussion

We received reports of cracks in 26 radomes. The cracks were found during inspections of the radome assembly of various Model 737 series airplanes that had in-flight entertainment systems installed using certain STC issued to Live TV. The STC numbers are STC ST00284BO, *http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/3ecc2e5e5f408bc1862579b30048ed60/$FILE/ST00284BO.pdf;* and STC ST02887AT, *http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/9bf85b85ea3e295d8625735600721055/$FILE/ST02887AT.pdf.* Investigation of the cause of the cracks revealed that lack of dimensional controls on the radome manufacturing drawings can result in the introduction of preload stress on the radome during its assembly with the skirt fairing. Preload stress combined with flight or handling stress, such as maintenance personnel stepping on the radome fairing assembly, might initiate a crack. The radome manufacturing drawings were revised on September 13, 2010, to add a control dimension, which was incorporated into production at radome serial number 498. Cracks in the radome, if not corrected, could result in the radome (or pieces) separating from the airplane and striking the tail, and consequently reducing the controllability of the airplane.

### Relevant Service Information

We reviewed Live TV Service Bulletin B737–53–0011, dated March 29, 2013. The service information describes procedures for repetitive inspections for cracks in the outer ply of the radome and replacing the radome if any crack is found.

### FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

### Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between the Proposed AD and the Service Information.'' In

addition, if any crack is found in a radome during an inspection, this proposed AD would require sending the inspection results to Live TV.

The FAA worked in conjunction with industry, under the Airworthiness Directives Implementation Aviation Rulemaking Committee, to enhance the AD system. One enhancement was a new process for annotating which steps in the service information are required for compliance with an AD. Differentiating these steps from other tasks in the service information is expected to improve an owner's/operator's understanding of crucial AD requirements and help provide consistent judgment in AD compliance. The actions specified in the service information described previously include steps that are labeled as RC (required for compliance) because these steps have a direct effect on detecting, preventing, resolving, or eliminating an identified unsafe condition.

As noted in the specified service information, steps labeled as RC must be done to comply with the proposed AD. However, steps that are not labeled as RC are recommended. Those steps that are not labeled as RC may be deviated from, done as part of other actions, or done using accepted methods different from those identified in the service information without obtaining approval of an AMOC, provided the steps labeled as RC can be done and the airplane can be put back in a serviceable condition. Any substitutions or changes to steps labeled as RC will require approval of an alternative method of compliance.

**Differences Between the Proposed AD and the Service Information**

Live TV Service Bulletin B737–53–0011, dated March 29, 2013, recommends that the initial detailed inspection be done within 1,250 flight hours from 120 days following the release date of that service bulletin. We have determined that the compliance time should be within 1,250 flight hours after the effective date of this AD. This difference has been coordinated with Live TV.

**Costs of Compliance**

We estimate that this proposed AD affects 165 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Inspections | 1 work-hour × $85 per hour = $85, per inspection cycle. | N/A | $85, per inspection cycle | $14, 025, per inspection cycle. |

We estimate the following costs to do any necessary replacements that would be required based on the results of the proposed inspections. We have no way of determining the number of aircraft that might need this replacement:

ON-CONDITION COSTS

| Action | Labor cost | Parts cost | Cost per product |
|---|---|---|---|
| Replacement | 8 work-hours × $85 per hour = $680 | $23,000 | $23,680 |

**Paperwork Reduction Act**

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to 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 control number for the collection of information required by this AD is 2120–0056. The paperwork cost associated with this AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this AD is 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.

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

## List of Subjects in 14 CFR Part 39

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

## The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**The Boeing Company:** Docket No. FAA–2013–0670; Directorate Identifier 2013–NM–081–AD.

**(a) Comments Due Date**

We must receive comments by September 19, 2013.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to The Boeing Company Model 737–600, –700, –800, –900, and –900ER airplanes, certificated in any category, with Live TV radomes having part number (P/N) 5063–100–V3 or 5063–101–V2 and a serial number in the range of 001 through 497 inclusive, and modified by the applicable supplemental type certificate (STC) identified in paragraphs (c)(1) and (c)(2) of this AD.

(1) ST00284BO, *http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/3ecc2e5e5f408bc1862579b30048ed60/$FILE/ST00284BO.pdf.*

(2) ST02887AT, *http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/9bf85b85ea3e295d8625735600721055/$FILE/ST02887AT.pdf.*

**(d) Subject**

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 53, Fuselage.

**(e) Unsafe Condition**

This AD was prompted by reports of cracks found during inspections of the radome assembly. We are issuing this AD to detect and correct cracks in the in-flight entertainment system radome assembly, which could result in the radome (or pieces) separating from the airplane and striking the tail, and consequently reducing the controllability of the airplane.

**(f) Compliance**

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

**(g) Repetitive Inspections and Corrective Actions**

Within 1,250 flight hours after the effective date of this AD: Perform a detailed inspection for cracks of the radome assembly, in accordance with the Accomplishment Instructions of Live TV Service Bulletin B737–53–0011, dated March 29, 2013. Repeat the inspection thereafter at intervals not to exceed 1,250 flight hours. If any crack is found during any inspection required by this paragraph, before further flight, replace the radome in accordance with the Accomplishment Instructions of Live TV Service Bulletin B737–53–0011, dated March 29, 2013.

**(h) Reporting Requirement**

If any crack is found during any inspection required by paragraph (g) of this AD, submit a report of the findings to Live TV, 8900 Hangar Boulevard, Orlando, FL 32827; telephone 407–812–2600; fax 407–812–2526; email *JaneAnne.Webb@livetv.net;* at the applicable time specified in paragraph (h)(1) or (h)(2) of this AD. The report must include the information specified in the service bulletin reporting form provided in Live TV Service Bulletin B737–53–0011, dated March 29, 2013.

(1) If the inspection was accomplished on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(2) If the inspection was accomplished before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

**(i) Special Flight Permit**

Special flight permits, as described in Section 21.197 and Section 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199), are not allowed.

**(j) Paperwork Reduction Act Burden Statement**

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.

**(k) Alternative Methods of Compliance (AMOCs)**

(1) The Manager, Atlanta Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) If the service information contains steps that are labeled as RC (Required for Compliance), those steps must be done to comply with this AD; any steps that are not labeled as RC are recommended. Those steps that are not labeled as RC may be deviated from, done as part of other actions, or done using accepted methods different from those identified in the specified service information without obtaining approval of an AMOC, provided the steps labeled as RC can be done and the airplane can be put back in a serviceable condition. Any substitutions or changes to steps labeled as RC require approval of an AMOC.

**(l) Related Information**

(1) For more information about this AD, contact Barry Culler, Aerospace Engineer, Airframe Branch, ACE–117A, FAA, Atlanta Aircraft Certification Office (ACO), 1701 Columbia Avenue, College Park, GA 30337; phone: 404–474–5546; fax: 404–474–5605; email: *william.culler@faa.gov.*

(2) For service information identified in this AD, contact Live TV, 8900 Hangar Boulevard, Orlando, FL 32827; telephone 407–812–2600; fax 407–812–2526; Internet *http://www.livetv.net.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

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

**Stephen P. Boyd,**

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

[FR Doc. 2013–18800 Filed 8–2–13; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2013–0475; Directorate Identifier 13–NE–18–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; General Electric Company Turbofan Engines

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for certain

General Electric Company (GE) model GEnx–2B67 and GEnx–2B67B turbofan engines. This proposed AD was prompted by the original equipment manufacturer's disclosure that certain critical rotating life-limited parts (LLPs) used in Boeing 747–8 flight tests had consumed more cyclic life than they would have in revenue flight cycles. These parts were then installed into engines and introduced into revenue service without adjustment to remaining cyclic life. This proposed AD would require a one-time adjustment to the cycle counts of those LLPs to account for the additional low cycle fatigue (LCF) life consumed during flight tests. We are proposing this AD to prevent the failure of critical rotating LLPs, uncontained engine failure, and damage to the airplane.

**DATES:** We must receive comments on this proposed AD by October 4, 2013.

**ADDRESSES:** You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

For service information identified in this proposed AD, contact General Electric Company, GE Aviation, Room 285, One Neumann Way, Cincinnati, OH; phone: 513–552–3272; email: *geae.aoc@ge.com*. You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

## Examining the AD Docket

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

**FOR FURTHER INFORMATION CONTACT:** Jason Yang, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7747; fax: 781–238–7199; email: *Jason.Yang@faa.gov*.

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2013–0475; Directorate Identifier 13–NE–18–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

## Discussion

We propose to adopt a new AD for certain GE model GEnx–2B67 and GEnx–2B67B turbofan engines. This proposed AD was prompted by GE's disclosure that certain critical rotating LLPs used in Boeing 747–8 flight tests had consumed more cyclic life than they would have in revenue flight cycles. This additional life usage was due to multiple changes in the engine rotor speed and thermal environment that are not performed in a typical revenue service flight. These parts were then installed into engines and introduced into revenue service without adjustment to remaining cyclic life. This proposed AD would require a one-time adjustment to the cycle counts of those LLPs to account for the additional LCF life consumed. This condition, if not corrected, could result in the failure of critical rotating LLPs, uncontained engine failure, and damage to the airplane.

## Relevant Service Information

We reviewed GE Service Bulletin (SB) No. 72–0116, Revision 1, dated April 23, 2013. The SB lists each affected critical rotating LLP by part number and serial number and prescribes the exact number of cycles to add to the cycle count for each affected LLP as a one-time adjustment. The list is extensive.

## FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of these same type designs.

## Proposed AD Requirements

This proposed AD would require a one-time adjustment to the cycle counts of certain critical rotating LLPs.

## Costs of Compliance

We estimate that this proposed AD affects 4 engines installed on airplanes of U.S. registry. We also estimate that it would take about 1 hour per engine to comply with this proposed AD. The average labor rate is $85 per hour. The prorated cost of required parts would be about $50,000 per engine. Based on these figures, we estimate the cost of the proposed AD to U.S. operators to be $200,340.

## Authority for This Rulemaking

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

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

## Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

(2) Is not a ''significant rule'' under the DOT Regulatory Policies and

Procedures (44 FR 11034, February 26, 1979),

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

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

### List of Subjects in 14 CFR Part 39

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

### The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**General Electric Company:** Docket No. FAA–2013–0475; Directorate Identifier 2013–NE–18–AD.

**(a) Comments Due Date**

We must receive comments by October 4, 2013.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to certain serial number General Electric Company (GE) model GEnx–2B67 and GEnx–2B67B turbofan engines. The affected GEnx–2B serial numbers are: 959–102 through 959–104; 959–107; 959–110 through 959–111; 959–113 through 959–118; 959–121; 959–124 through 959–133; 959–159 through 959–161; 959–164; 959–176; and 959–191.

**(d) Unsafe Condition**

This AD was prompted by GE's report that certain critical rotating life-limited parts (LLPs) used in Boeing 747–8 flight tests had consumed more cyclic life than they would have in revenue service flights. These parts were then installed into engines and introduced into revenue service without adjustment to remaining cyclic life. We are issuing this AD to prevent the failure of critical rotating LLPs, uncontained engine failure, and damage to the airplane.

**(e) Compliance**

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

**(f) Adjust the Cycle Counts of Certain Critical Rotating LLPs**

Within 30 days after the effective date of this AD, perform a one-time adjustment to the cycle count of each part identified in paragraph 4, Appendix A, of GE Service Bulletin (SB) No. 72–0116, Revision 1, dated April 23, 2013.

**(g) Alternative Methods of Compliance (AMOCs)**

The Manager, Engine Certification Office, FAA, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request.

**(h) Related Information**

(1) For more information about this AD, contact Jason Yang, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7747; fax: 781–238–7199; email: *Jason.Yang@faa.gov*.

(2) Refer to GE SB No. 72–0116, Revision 1, dated April 23, 2013 for related information.

(3) For service information identified in this proposed AD, contact General Electric Company, GE Aviation, Room 285, One Neumann Way, Cincinnati, OH; phone: 513–552–3272; email: *geae.aoc@ge.com*. You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Issued in Burlington, Massachusetts, on July 25, 2013.

**Frank P. Paskiewicz,**

*Acting Director, Aircraft Certification Service.*

[FR Doc. 2013–18794 Filed 8–2–13; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2013–0255; Airspace Docket No. 13–ACE–4]**

## Proposed Amendment of Class E Airspace; Chariton, IA

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to amend Class E airspace at Chariton, IA. Decommissioning of the Chariton non-directional beacon (NDB) at Chariton Municipal Airport has made reconfiguration necessary for standard instrument approach procedures and for the safety and management of Instrument Flight Rules (IFR) operations at the airport.

**DATES:** 0901 UTC. Comments must be received on or before September 19, 2013.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2013–0255/Airspace Docket No. 13–ACE–4, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

**FOR FURTHER INFORMATION CONTACT:** Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone: (817) 321–7716.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2013–0255/Airspace Docket No. 13–ACE–4.'' The postcard will be date/time stamped and returned to the commenter.

### Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/*

*air_traffic/publications/airspace_amendments/*.

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

**The Proposal**

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by modifying Class E airspace extending upward from 700 feet above the surface for standard instrument approach procedures at Chariton Municipal Airport, Chariton, IA. Airspace reconfiguration is necessary due to the decommissioning of the Chariton NDB and the cancellation of the NDB approach. Controlled airspace is necessary for the safety and management of IFR operations at the airport.

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

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend controlled airspace at Chariton Municipal Airport, Chariton, IA.

**Environmental Review**

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9V, Airspace Designations and Reporting Points, dated August 8, 2012, and effective September 15, 2012, is amended as follows:

*Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**ACE IA E5 Chariton, IA [Amended]**

Chariton Municipal Airport, IA
(Lat. 41°01′11″ N., long. 93°21′35″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Chariton Municipal Airport.

Issued in Fort Worth, TX, on July 19, 2013.

**David P. Medina,**

*Manager, Operations Support Group, ATO Central Service Center.*

[FR Doc. 2013–18863 Filed 8–2–13; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2013–0172; Airspace Docket No. 13–AGL–9]**

## Proposed Amendment of Class E Airspace; Wadena, MN

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to amend Class E airspace at Wadena, MN. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAP) at Wadena Municipal Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at the airport. Geographical coordinates would also be updated.

**DATES:** Comments must be received on or before September 19, 2013.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2013–0172/Airspace Docket No. 13–AGL–9, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

**FOR FURTHER INFORMATION CONTACT:** Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone: 817–321–7716.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2013–0172/Airspace Docket No. 13–AGL–9.'' The postcard will be date/time stamped and returned to the commenter.

**Availability of NPRMs**

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

**The Proposal**

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by amending Class E airspace extending upward from 700 feet above the surface to accommodate new standard instrument approach procedures at Wadena Municipal Airport, Wadena, MN. Accordingly, a segment would extend from the current 6.5-mile radius of the airport to 12.9 miles north of the airport to retain the safety and management of IFR aircraft in Class E airspace to/from the en route environment. The airport's geographical coordinates would also be updated to coincide with the FAA's aeronautical database.

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

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend controlled airspace at Wadena Municipal Airport, Wadena, MN.

**Environmental Review**

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, and effective September 15, 2012, is amended as follows:

*Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**AGL MN E5 Wadena, MN [Amended]**

Wadena Municipal Airport, MN
(Lat. 46°27′00″ N., long. 95°12′39″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Wadena Municipal Airport, and within two miles each side of the 343° bearing from the airport extending from the 6.5-mile radius to 12.9 miles north of the airport.

Issued in Fort Worth, TX, on July 19, 2013.

**David P. Medina,**

*Manager, Operations Support Group, ATO Central Service Center.*

[FR Doc. 2013–18861 Filed 8–2–13; 8:45 am]

BILLING CODE 4901–13–P

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Docket No. FAA–2013–0584; Airspace Docket No. 13–ACE–6]**

### Proposed Amendment of Class E Airspace; Washington, KS

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to amend Class E airspace at Washington,

KS. Decommissioning of the Morrison non-directional beacon (NDB) at Washington County Memorial Airport has made reconfiguration necessary for standard instrument approach procedures and for the safety and management of Instrument Flight Rules (IFR) operations at the airport. Geographic coordinates would also be updated.

**DATES:** 0901 UTC. Comments must be received on or before September 19, 2013.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2013–0584/Airspace Docket No. 13–ACE–6, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

**FOR FURTHER INFORMATION CONTACT:** Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone: 817–321–7716.

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2013–0584/Airspace Docket No. 13–ACE–6.'' The postcard will be date/time stamped and returned to the commenter.

## Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/*.

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

## The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), part 71 by modifying Class E airspace extending upward from 700 feet above the surface for standard instrument approach procedures at Washington County Memorial Airport, Washington, KS. Airspace reconfiguration to within a 7.3-mile radius of the airport is necessary due to the decommissioning of the Morrison NDB and cancellation of the NDB approach and would enhance the safety and management of IFR operations at the airport. Geographic coordinates of the airport would also be updated to coincide with the FAA's aeronautical database.

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

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend controlled airspace at Washington County Memorial Airport, Washington, KS.

## Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

## List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

## The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

### § 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9V, Airspace Designations and Reporting Points, dated August 8, 2012, and

effective September 15, 2012, is amended as follows:

*Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**ACE KS E5 Washington, KS [Amended]**

Washington County Memorial Airport, KS (Lat. 39°44′07″ N., long. 97°02′51″ W.)

That airspace extending upward from 700 feet above the surface within a 7.3-mile radius of Washington County Memorial Airport.

Issued in Fort Worth, TX, on July 25, 2013.

**David P. Medina,**

*Manager, Operations Support Group, ATO Central Service Center.*

[FR Doc. 2013–18868 Filed 8–2–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DELAWARE RIVER BASIN COMMISSION

## 18 CFR Part 410

## Amendments to the Water Quality Regulations, Water Code and Comprehensive Plan To Revise the Human Health Water Quality Criteria for PCBs in Zones 2 Through 6 of the Delaware Estuary and Bay

**AGENCY:** Delaware River Basin Commission.

**ACTION:** Proposed rule; notice of public hearing.

**SUMMARY:** The Delaware River Basin Commission (''DRBC'' or ''Commission'') will hold a public hearing to receive comments on proposed amendments to the Commission's *Water Quality Regulations, Water Code* and *Comprehensive Plan* to revise the water quality criteria for polychlorinated biphenyls (''PCBs'') in the Delaware Estuary and Bay, DRBC Water Quality Management Zones 2 through 6, for the protection of human health from carcinogenic effects. The Commission will simultaneously solicit comment on a draft implementation strategy to support achievement of the criteria.

**DATES:** The public hearing will be held starting at 1:00 p.m. on Tuesday, September 10, 2013. The hearing will continue until all those wishing to testify have had an opportunity to do so. Written comments will be accepted and must be received by 5:00 p.m. on Friday, September 20, 2013. More information regarding the procedures for the hearing and comments is provided below.

**ADDRESSES:** The public hearing will be held in the Goddard Conference Room at the Commission's office building located at 25 State Police Drive, West Trenton, NJ. As Internet mapping tools are inaccurate for this location, please use the driving directions posted on the Commission's Web site.

*Oral testimony and written comments:* Persons wishing to testify at the hearing are asked to register in advance by phoning Paula Schmitt at 609–883–9500, ext. 224. Written comments may be submitted as follows: If by email, to *paula.schmitt@drbc.state.nj.us;* if by fax, to Commission Secretary at 609–883–9522; if by U.S. Mail, to Commission Secretary, DRBC, P.O. Box 7360, West Trenton, NJ 08628–0360; and if by overnight mail, to Commission Secretary, DRBC, 25 State Police Drive, West Trenton, NJ 08628–0360. Comments also may be delivered by hand at any time during the Commission's regular office hours (Monday through Friday, 8:30 a.m. through 5:00 p.m. except on national holidays) until the close of the comment period at 5:00 p.m. on Friday, September 20. In all cases, please include the commenter's name, address and affiliation, if any, in the comment document and ''PCB Rulemaking'' in the subject line.

**FOR FURTHER INFORMATION CONTACT:** The rule text, basis and background document and the draft Implementation Strategy are available on the DRBC Web site, DRBC.net. A May 10, 2012 PowerPoint presentation that illustrates PCB loading reductions achieved through the implementation of the Commission's PMP Rule is also posted on the Web site. For further information, please contact Commission Secretary Pamela M. Bush, 609–883–9500 ext. 203.

**SUPPLEMENTARY INFORMATION:**

*Re-Proposal.* A notice of proposed rulemaking to amend the current PCB criteria and to invite comment on an implementation plan was published in the **Federal Register** (74 FR 41100) on August 14, 2009. The Commission deferred action on the proposal, however, pending the refinement of implementation strategies for point sources. Today, the uniform criterion of 16 picograms per liter is re-proposed, and a draft implementation strategy that has been revised for point sources is simultaneously published for comment.

*Current Criteria.* The human health water quality criteria for PCBs currently in effect in Zones 2 through 5 of the Delaware Estuary were established by the Commission in 1996 (*see* 61 FR 58047 and incorporation by reference at 18 CFR part 410). The 1996 criterion applicable to the lower portion of Zone 5 was extended to Zone 6, Delaware Bay, in 2010, effective the following year (*see* 76 FR 16285). The development of these PCB criteria pre-dated the collection of site-specific bioaccumulation data for the Estuary and Bay and site-specific fish-consumption data for Zones 2 through 4 that are relevant to the development of human health water quality criteria. They are also inconsistent with current guidance issued by the U.S. Environmental Protection Agency (''EPA'') for the development of such criteria, and they vary by water quality zone, adding undue complexity to application of the criteria in these tidal waters.

*Development of New Criteria.* By Resolution No. 2003–11 on March 19, 2003 the Commission directed the executive director to initiate rulemaking on a proposal to revise the Commission's water quality criteria for PCBs for the protection of human health from carcinogenic effects to reflect site-specific data on fish consumption, site-specific bioaccumulation factors, and current EPA guidance on development of human health criteria. Amendment of the PCB criteria was delayed, however, pending ongoing work by the Commission's Toxics Advisory Committee (''TAC'') to develop the new criterion and a simultaneous initiative by the Commission and diverse stakeholders to develop an implementation plan. The TAC is a standing committee of stakeholders, including regulators, municipal and industrial dischargers and environmental organizations that advises the Commission on technical matters relating to the control of toxic contaminants in shared waters of the Basin.

Rigorously applying the most current available data and methodology, including site-specific data on fish consumption, site-specific bioaccumulation factors, and the current EPA methodology for the development of human health criteria for toxic pollutants (*see* EPA–822–B–00–004, October 2000), the TAC in July 2005 completed development of a revised PCB water quality criterion for the protection of human health from carcinogenic effects for the Delaware Estuary and Bay, recommending adoption of a uniform criterion of 16 picograms per liter for Water Quality Management Zones 2 through 6. By Resolution No. 2005–19 on December 7, 2005, the Commission again directed the executive director to conduct rulemaking, specifically to replace the existing criteria for PCBs with the

uniform criterion of 16 picograms per liter.

Over the course of the next three-and-a-half years, the Commission continued to work with co-regulators on an implementation strategy for point and non-point sources to accompany the proposed uniform criterion. A notice of proposed rulemaking to amend the current PCB criteria and to invite comment on an implementation plan was issued in August 2009 (*see* 74 FR 41100). The Commission deferred action on the proposal, however, pending the refinement of implementation strategies for point sources. The updated, uniform criterion of 16 picograms per liter is now re-proposed, and a draft implementation strategy that has been revised for point sources is simultaneously published for comment.

*Proposed Amendment.* It is proposed to amend Table 6 in Section 3.30 of Article 3 of the *Water Quality Regulations* and *Water Code* as follows: For the parameter ''PCBs (Total)'', in the column headed ''Freshwater Objectives (ug/l): Fish & Water Ingestion,'' by removing the number ''0.0000444'' and inserting ''0.000016''; in the column headed ''Freshwater Objectives (ug/l): Fish Ingestion Only,'' by removing the number ''0.0000448'' and inserting ''0.000016''; and in the column headed ''Marine Objectives (ug/l): Fish Ingestion Only,'' by removing the number ''0.0000079'' and inserting ''0.000016''. It is further proposed to amend paragraph 410.1(c) of title 18 of the Code of Federal Regulations by replacing the date of incorporation by reference that appears there (December 8, 2010), with the date on which the Commission adopts a final rule in response to this proposal.

*Water Quality Impairment for PCBs.* Because high levels of PCBs have resulted in state-issued fish consumption advisories for certain species caught in the Estuary and Bay, these waters are listed by the bordering states as impaired under Section 303(d) of the federal Clean Water Act (''CWA''), and a total maximum daily load (''TMDL'') is required to be established for them. A TMDL expresses the maximum amount of a pollutant that a water body can receive and still attain water quality standards. Once the TMDL is calculated, it is allocated to all sources in the watershed—point and nonpoint. In order to ensure the attainment and maintenance of water quality standards, a source must not discharge a load in excess of its allocated share of the TMDL.

The EPA established TMDLs for PCBs on behalf of the states in December of 2003 for the Delaware Estuary and in December of 2006 for the Delaware Bay (''Stage 1 TMDLs''). Upon adoption of revised human health water quality criteria for PCBs in the Delaware Estuary and Bay, it is anticipated that EPA will establish new TMDLs (''Stage 2 TMDLs'') corresponding to the updated criteria.

*Implementing PCB Load Reductions.* To initiate PCB reductions, by Resolution No. 2005–9 in May 2005, the Commission amended its Water Quality Regulations (''WQR'') to establish a requirement for PCB Pollutant Minimization Plans (''PMPs'') (*see* Section 4.30.9 of the WQR, incorporated by reference at 18 CFR Part 410) (''the PMP Rule''). In accordance with the PMP Rule the largest point source dischargers of PCBs to the Delaware Estuary and Bay undertook the development and implementation of PMPs, including a variety of track-down and load reduction strategies. Ambient and effluent data collected between 2005 and 2011 show that their efforts over the past 12 years (and in some cases longer) have substantially reduced point source PCB loadings to the Estuary and Bay. However, because PCBs persist in the environment, including in soils that drain to municipal and industrial discharge facilities, most dischargers will require more time, including in some instances decades, to achieve the PCB loading reductions needed to meet their assigned wasteload allocations.

The draft document entitled *Implementation Strategy for Polychlorinated Biphenyls for Zones 2–6 of the Delaware River Estuary* (''Implementation Strategy'') builds on the approach embodied by the PMP Rule. Among other things, it attempts to better integrate PMP requirements with the National Pollutant Discharge Elimination System (NPDES) permit program administered by the Estuary states of Delaware, New Jersey and Pennsylvania pursuant to the CWA.

Notably, the 2003 Delaware Estuary TMDL report projected that ''due to the scope and complexity of the problem that has been defined through these TMDLs, achieving the estuary water quality standards for PCBs will take decades.'' (EPA 2003, Executive Summary, p. xiii). Adoption of an updated, uniform criterion for the Delaware Estuary and Bay and implementation of the criterion by means of the proposed strategy will not alter this prognosis. However, the proposed criterion and Implementation Strategy are intended to align the Commission's water quality criteria with current science and to ensure that increasingly protective pollutant levels in fish and ambient water are achieved at an aggressive pace until the protected use—fishable waters—is restored.

*Subjects on Which Comment is Expressly Solicited.* Public comment is solicited on all aspects of the proposed rule. These include but are not limited to the assumptions applied in developing the criterion as set forth in a basis and background document that is available on the DRBC Web site, DRBC.net. Comment on the proposed Implementation Strategy for the new criterion, also posted on the Web site, is simultaneously requested.

Dated: July 30, 2013.

**Pamela M. Bush,**

*Commission Secretary.*

[FR Doc. 2013–18810 Filed 8–2–13; 8:45 am]

BILLING CODE P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 117

**[Docket No. USCG–2013–0526]**

**RIN 1625–AA09**

## Drawbridge Operation Regulation; Umpqua River, Reedsport, OR

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to temporarily change the operating schedule that governs the U.S. 101 Umpqua River swing bridge, mile 11.1, at Reedsport, OR. The proposed rule change is necessary to accommodate Oregon Department of Transportation's (ODOT) extensive bridge maintenance and restoration efforts. The bridge is currently scheduled to open on signal if at least two hours notice is given. ODOT proposes to only open the bridge with a minimum of six hours notice and will limit the openings to twice daily; once in the morning and once in the evening.

**DATES:** Comments and related material must reach the Coast Guard on or before September 4, 2013.

**ADDRESSES:** You may submit comments identified by docket number USCG–2013–0526 using any one of the following methods:

(1) Federal eRulemaking Portal: *http://www.regulations.gov*.

(2) Fax: 202–493–2251.

(3) Mail or Delivery: Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE.,

Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202–366–9329.

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments. To avoid duplication, please use only one of these four methods.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule change, call or email Steven M. Fischer, Lieutenant Commander, Thirteenth District Bridge Program Office, Coast Guard, telephone 206–220–7277; email *Steven.M.Fischer2@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**

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
§ Section Symbol
U.S.C. United States Code

## A. Public Participation and Request for Comments

We encourage you to participate in this proposed rulemaking by submitting comments and related materials. All comments received will be posted, without change to *http://www.regulations.gov* and will include any personal information you have provided.

### *1. Submitting Comments*

If you submit a comment, please include the docket number for this proposed rulemaking (USCG–2013–0526), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (*http://www.regulations.gov*), or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* type the docket number [USCG–2013–0526] in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

### *2. Viewing Comments and Documents*

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number (USCG–2013–0526) in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC, 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

### *3. Privacy Act*

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

### *4. Public Meeting*

We do not now plan to hold a public meeting, but you may submit a request for a meeting that reaches the Coast Guard on or before August 20, 2013 using one of the four methods specified under **ADDRESSES**. Please explain why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

## B. Basis and Purpose

The Oregon Department of Transportation (ODOT), who owns and operates this bridge, has requested a temporary change to the existing operating regulations of the U.S. 101 Umpqua River Bridge, at Reedsport, OR to facilitate restoration of the bridge. The restoration project will entail painting, rust removal, and steel repairs which require full containment to keep paint and debris out of the Umpqua River. The bridge swing span requires a containment system that is balanced in order to allow the bridge to open properly.

In an effort to accommodate both the needs of the waterway and highway users and exercising good stewardship of public funding, ODOT requested a temporary rule change in order to reduce the burden on ODOT maintenance crews from repeatedly installing and uninstalling the containment system. The containment structure will extend ten feet below the bridge, reducing the existing clearance of the bridge from approximately 36 feet to approximately 26 feet at mean high tide.

The current operating schedule will overburden construction crews in that if the bridge needs to open, the containment system will need to be cleaned out and disassembled on both side spans of the swing span due to the need to maintain proper balance between the spans. The estimated time to clean and disassemble the containment system is approximately 2 hours.

To facilitate the bridge restoration work, and to minimize the impact on navigation, from December 1, 2013 to September 30, 2015 the drawbridge would operate as follows: the bridge shall be maintained in the closed position to perform maintenance; it would open twice daily, once at 7 a.m. and once at 6 p.m., only if an opening is requested at least six hours in advance.

The U.S. 101 Umpqua River Bridge is a swing span drawbridge, near Reedsport, OR, located at waterway mile 11.1. In the closed position, this drawbridge has a vertical clearance of 36 feet above mean high tide. Vessel traffic along this part of the Umpqua River consists of vessels ranging from occasional commercial tug and barge to small pleasure craft. ODOT has examined bridge opening logs and contacted all waterway users that have requested bridge openings throughout the last two years. The input ODOT received from waterway users indicated that the proposed change will likely have a minimal impact on users, and ODOT has attempted to mitigate identified concerns by offering to provide a location for a limited number

of vessels up to 75′ in length to dock during non-opening hours down river from the U.S. 101 Umpqua River Bridge at Salmon Harbor Marina.

**C. Discussion of Proposed Rule**

The Coast Guard would temporarily revise the operating regulations at 33 CFR 117.893. The regulation currently states that the U.S. 101 Umpqua River Bridge shall open on signal if at least two hours notice is given. The Coast Guard proposes to temporarily change the regulation such that from 7 a.m. on December 1, 2013 to 11:59 p.m. on September 30, 2015, the draw of the US 101 Bridge, mile 11.1, at Reedsport, Oregon, shall open at 7 a.m. and 6 p.m. when at least 6 hours of advance notice is given.

**D. Regulatory Analyses**

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

*1. Regulatory Planning and Review*

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. The Coast Guard has made this finding based on the fact that all requested bridge openings will be granted with advance notification and vessels that can safely transit under the bridge may do so at any time.

*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 proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels needing to transit the bridge between 7 a.m. and 6 p.m. Down river dock access will be made available during closure hours for vessels awaiting transit, and all vessels that can safely transit under the bridge may do so at any time.

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

*3. Assistance for Small Entities*

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

*4. Collection of Information*

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

*5. Federalism*

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

*6. Protest Activities*

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

*7. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule 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 proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

*9. Civil Justice Reform*

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

*10. Protection of Children*

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

*11. Indian Tribal Governments*

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

*12. Energy Effects*

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

*13. Technical Standards*

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

*14. Environment*

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and

Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This proposed rule simply promulgates the operating regulations or procedures for drawbridges. This rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction.

Under figure 2–1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

**E. List of Subjects in 33 CFR Part 117**

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 33 CFR 1.05–1; and Department of Homeland Security Delegation No. 0170.1.

■ 2. Amend temporarily § 117.893 to read as follows:

**§ 117.893 Umpqua River.**

(a) From 7 a.m. on December 1, 2013 to 11:59 p.m. on September 30, 2015, the draw of the US 101 Bridge, mile 11.1, at Reedsport, Oregon, shall open at 7 a.m. and 6 p.m. when at least 6 hours of advance notice is given.

Dated: July 23, 2013.

**R.T. Gromlich,**

*Rear Admiral, U. S. Coast Guard Commander, Thirteenth Coast Guard District.*

[FR Doc. 2013–18741 Filed 8–2–13; 8:45 am]

BILLING CODE 9110–04–P

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### 36 CFR Part 1250

**[FDMS No. NARA–13–0003; Agency No. NARA–2013–037]**

**RIN 3095–AB73**

## NARA Records Subject to FOIA

**AGENCY:** National Archives and Records Administration.

**ACTION:** Proposed rule.

**SUMMARY:** NARA proposes to revise its regulation governing Freedom of Information Act (FOIA) access to NARA's archival holdings and NARA's own operational records. The proposed revisions include clarification of which records are subject to the FOIA and NARA's authority to grant access, and adjustments to NARA's FOIA procedures to incorporate changes resulting from the OPEN FOIA Act of 2009, the OPEN Government Act of 2007, and the Electronic Freedom of Information Act Amendments of 1996 (EFOIA). The proposed rule will affect individuals and organizations that file FOIA requests for NARA operational records and archival holdings.

**DATES:** Submit comments on or before October 4, 2013.

**ADDRESSES:** You may submit comments, identified by RIN 3095–AB73, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: kimberly.keravuori@nara.gov.* Include RIN 3095–AB73 in the subject line of the message.
- *Fax:* 301–837–0319.
- *Mail:* (For paper, disk, or CD–ROM submissions. Include RIN 3095–AB73 on the submission) Regulations Comments Desk, Strategy Division (SP); Suite 4100; National and Archives Records Administration; 8601 Adelphi Road; College Park, MD 20740–6001.
- *Hand delivery or courier:* Deliver comments to 8601 Adelphi Road; College Park, MD.

*Instructions:* All submissions received must include the agency name and Regulatory Information Number (RIN) for this rulemaking (RIN 3095–AB73). All comments received may be published without changes, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Kimberly Keravuori, by telephone at 301–837–3151, by email to *kimberly.keravuori@nara.gov,* or by mail to Kimberly Keravuori, Regulations Program Manager; Strategy Division (SP), Suite 4100; National Archives and Records Administration; 8601 Adelphi Road; College Park, MD 20740–6001.

**SUPPLEMENTARY INFORMATION:**

### Types of Records and FOIA Access

Unlike most agencies, NARA has two categories of records governed by FOIA: NARA's own operational records and archival holdings of the Federal government. Among the archival holdings, the FOIA applies only to executive branch records in NARA's legal custody and to Presidential records created since 1981. Presidential materials in NARA's custody that were created before 1981 were donated to the Federal government by the President who created them, except that Nixon presidential materials are governed by the Presidential Recordings and Materials Preservation Act (see Part 1275). Access to those records is governed by the deed of gift pertaining to those records, and they are therefore not subject to the FOIA.

NARA cannot grant FOIA access to the following archival holdings. Access to these holdings must be granted by the organizations that created them:

- Executive agency records stored in NARA's federal records centers remain in the legal custody of the agencies that created them. Access to these records can be granted only by the creating agency.
- The records of the U.S. House of Representatives and U.S. Senate at NARA remain in the legal custody of the Congress. Access to those records is governed by the Secretary of the Senate and the Speaker of the House.
- Records of the Supreme Court of the United States at NARA remain in the legal custody of the Supreme Court, and it controls access to these records. Section 1250.6 refers requesters to other NARA regulations governing access to these records and to the records of other Federal legislative and judicial branch agencies, which are not subject to FOIA.

### Changes Due to OPEN Government and OPEN FOIA Acts

Changes resulting from the OPEN Government Act of 2007 (Pub. L. 110–175) and OPEN FOIA Act of 2009 (Pub. L. 111–83) are found throughout the proposed rule.

The new § 1250.2 reflects NARA's open access mission and culture, which are defined by a presumption of openness and by discretionary disclosures of information.

Section 1250.3 adds the definition of a FOIA Public Liaison and expanded definition of a news media representative. These two additions are requirements under the OPEN

Government Act. The proposed § 1250.20 requires requesters to notify NARA of their current mailing address. Section 1250.22 explains the FOIA Customer Service Centers. And § 1250.24 addresses how to submit a FOIA request to NARA online through the *FOIAonline* system.

The proposed § 1250.26 sets the standard time for NARA to administratively close a FOIA request at 60 calendar days from the date of last correspondence with a requester and informs requesters that NARA does not have authority to declassify national security information and that NARA must refer all requests for declassification to agencies with such authority. The proposed § 1250.27 includes procedures informing a requester of an estimated date of completion for their FOIA request.

Subpart C, Fees, governs the fees charged by NARA for FOIA requests. Proposed § 1250.50 states that NARA's fee schedule for obtaining copies of archival records can be found on NARA's Web page and that unresolved fee negotiations can result in the administrative closing of a FOIA request. Section 1250.52 establishes increased fees for the copying of operational records.

Subpart D, Appeals, governs the procedures for requesters to file appeals and how NARA will process those appeals. Proposed § 1250.74 informs requesters of the Office of Government Information Services (OGIS) and its mediation and dispute resolution services between FOIA requesters and Federal agencies.

**Regulatory Analysis**

This proposed rule is not a significant regulatory action for the purposes of Executive Order 12866 and has been reviewed by the Office of Management and Budget (OMB). The proposed amendment is also not a major rule as defined in 5 U.S.C. Chapter 8, Congressional Review of Agency Rulemaking. As required by the Regulatory Flexibility Act, it is hereby certified that this proposed rule will not have a significant impact on a substantial number of small entities because this regulation will affect only people and organizations who file FOIA requests with NARA. This proposed rule does not have any federalism implications.

**List of Subjects in 36 CFR Part 1250**

Administrative practice and procedure, Archives and records, Confidential business information, Freedom of information, Information, Records, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the National Archives and Records Administration proposes to amend 36 CFR part 1250 as follows:

■ 1. Revise part 1250 to read as follows:

## PART 1250—NARA RECORDS SUBJECT TO FOIA

### Subpart A—General Information About Freedom of Information Act (FOIA) Requests

Sec.
1250.1 Scope of this part.
1250.2 Presumption of Openness
1250.3 Definitions
1250.4 Who can file a FOIA request?
1250.6 Does FOIA apply to all of the records at NARA?
1250.8 Do I need to use FOIA to gain access to records at NARA?
1250.10 Does NARA provide access to all the executive branch records housed at NARA facilities?
1250.12 What types of records are available in NARA's FOIA library?

### Subpart B—How to Request Records Under FOIA

1250.20 What do I include in my FOIA request?
1250.22 Where do I send my FOIA request?
1250.24 Will NARA accept a FOIA request electronically?
1250.26 How will NARA process my FOIA request?
1250.27 How does NARA determine estimated dates of completion for FOIA requests?
1250.28 How do I request expedited processing?
1250.30 How will NARA respond to my request?
1250.32 How may I request assistance with the FOIA process?

### Subpart C—Fees

1250.50 General information on fees.
1250.52 FOIA fee schedule for operational records.
1250.54 How will NARA calculate FOIA fees for operational records?
1250.56 How may I request a fee waiver for operational records?

### Subpart D—Appeals

1250.70 When may I appeal NARA's FOIA determination?
1250.72 How do I file an appeal?
1250.74 How does NARA process appeals?

### Subpart E—Special Situations

1250.80 How does a submitter identify records containing confidential commercial information?
1250.82 How does NARA process FOIA requests for confidential commercial information?

**Authority:** 44 U.S.C. 2104(a) and § 2204 (3)(c)(1); 5 U.S.C. 552; E.O. 13526, 75 FR 707 and 75 FR 1013, 3 CFR, 2009 Comp., p. 298–327; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

### Subpart A—General Information About Freedom of Information Act (FOIA) Requests

#### § 1250.1 Scope of this part.

This part implements the provisions of the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended, for NARA operational records and archival records that are subject to FOIA. This part contains the rules that NARA follows to process FOIA requests, such as the amount of time NARA has to make a determination regarding the release of records and what fees NARA may charge. Other NARA regulations in 36 CFR parts 1254 through 1275 provide detailed guidance for conducting research at NARA.

#### § 1250.2 Presumption of Openness

NARA, as an archives, has always been committed to providing public access to as many of its records as possible. NARA therefore continues to affirmatively release and post records, or descriptions of such records, online in the absence of any FOIA request. NARA also makes every effort to make discretionary disclosures of information that could otherwise be withheld under an exemption.

#### § 1250.3 Definitions.

The following definitions apply to this part:

(a) *Archival records* means permanently valuable records of the United States Government that have been transferred to the legal custody of the Archivist of the United States.

(b) *Commercial use requester* means a requester seeking information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person or entity on whose behalf the request is made.

(c) *Confidential commercial information* means records provided by a submitter that may contain trade secrets or confidential business or financial information that is exempt from release under the FOIA because disclosure could reasonably be expected to cause the submitter substantial competitive harm.

(d) *Educational institution request* means a request made by a school, university or other educational institution that operates a program of scholarly research. To qualify for this category, a requester must show that the request is authorized by, and is made under the auspices of, a qualifying institution and that the records are not sought for a commercial use but are sought to further scholarly research.

(e) *Expedited processing* means the process set forth in the FOIA that allows

requesters to ask for expedited processing of their FOIA request if they can demonstrate a compelling need.

(f) *Fee category* means one of the four categories set forth in the FOIA to determine whether a requester will be charged fees for search, review, and duplication. The categories are: Commercial requesters; non-commercial scientific or educational institutions; news media requesters; and all other requesters.

(g) *Fee waiver* means the waiver or reduction of processing fees if a requester can demonstrate that certain standards set forth in the FOIA are satisfied, including that the information is in the public interest and is not requested for a commercial interest.

(h) *FOIA Public Liaison* means an agency official who is responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes.

(i) *FOIA request* means a written request, that cites the Freedom of Information Act, for access to NARA operational records, records of the executive branch of the Federal Government held by NARA, and/or Presidential or Vice Presidential records in the custody of NARA that were created after January 19, 1981.

(j) *Freedom of Information Act (FOIA)* means the law codified at 5 U.S.C. 552 that provides the public with the right to request government records from Federal executive branch agencies.

(k) *Freelance journalist* means an individual who qualifies as a representative of the news media because the individual can demonstrate a solid basis for expecting publication through a news organization, even though not in its permanent or full-time employ. A publication contract would be the clearest proof of a solid basis, but the individual's publication history may also be considered in demonstrating this solid basis.

(l) *News media representative* means a person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public; one that actively gathers information of potential interest to a segment of the public, uses its editorial skills to turn raw materials into a distinct work, and distributes that work to an audience. The term ''news'' means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large; publishers of periodicals, including print and online publications, who make their products available for purchase or subscription to the general public (but only in those instances when they can qualify as disseminators of news); and freelance journalists who can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is employed by that entity.

(m) *Non-commercial scientific institution* means an institution that is not operated on a basis that furthers the commercial, trade, or profit interests of any person or organization, and which is operated solely for the purpose of conducting scientific research.

(n) *Operational records* means records that NARA creates or receives in carrying out its mission and responsibilities as an executive branch agency. This does not include archival records as defined in paragraph (a) of this section.

(o) *Original Classification Authority* means the authority to classify information as National Security Information at creation, granted by the President of the United States in Executive Order 13526, Sec. 1.3.

(p) *Other requesters* means any individual who does not qualify as a commercial-use requester, representative of the news media including a freelance journalist, or an educational or non-commercial scientific institution requester.

(q) *Presidential records* means the official Presidential and Vice Presidential records created or received by the President, the Vice President, or the White House Staff since January 20, 1981, and covered under the Presidential Records Act, 44 U.S.C. 2201–2207. Presidential Executive Orders also apply to these records.

(r) *Presidential Records Act* means the law that, in part, governs access to presidential records and is codified at 44 U.S.C. 2201–2207 and Part 1270 of these regulations. The law contains six restrictions to release of information, which apply for twelve years after a President leaves office. Four of the PRA restrictions are identical to FOIA exemptions 1, 3, 4, and 6. Two relate to appointments to Federal office and confidential communications requesting or submitting advice between the President and his advisers, or between such advisers. The PRA also excludes application of FOIA exemption 5.

(s) *Review* means the examination of documents responsive to a request to determine if any, or any part of them, are exempt from release under FOIA and to determine if NARA will release exempted records.

(t) *Search* means the process of looking for and retrieving records or information responsive to a request. It also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format.

(u) *Submitter* means any person or entity providing potentially confidential commercial information to an agency, which information may be subject to a FOIA request. The term submitter includes, but is not limited to, individuals, corporations, state governments, and foreign governments.

**§ 1250.4 Who can file a FOIA request?**

Any individual, partnership, corporation, association, or public or private organization other than a Federal agency, regardless of nationality, may file a FOIA request with NARA. The Administrative Procedure Act, 5 U.S.C. 551(2), excludes Federal agencies from filing FOIA requests. However, state and local governments may file FOIA requests.

**§ 1250.6 Does FOIA apply to all of the records at NARA?**

No, FOIA applies only to the records of the executive branch of the Federal government and certain Presidential and Vice Presidential records. The following chart may help determine how to request access to NARA's records:

| If you want access to . . . | Then access is governed by . . . |
|---|---|
| (a) Records of executive branch agencies | This CFR part and parts 1254 through 1260 of this chapter. FOIA applies to these records. |
| (b) Records of the Federal courts | Parts 1254 through 1260 of this chapter. FOIA does not apply to these records. |
| (c) Records of Congress and legislative branch agencies | Parts 1254 through 1260 of this chapter. FOIA does not apply to these records. |
| (d) Presidential records (created by Presidents and Vice Presidents holding office since 1981). | This part and parts 1254 through 1270 of this chapter. FOIA applies to these records 5 years after the President leaves office. |

| If you want access to . . . | Then access is governed by . . . |
|---|---|
| (e) Documents created by Presidents holding office before 1981 and housed in a NARA Presidential library. | The deed of gift under which they were given to NARA. These documents are not agency records and FOIA does not apply to these materials. |
| (f) Nixon Presidential materials | Part 1275 of this chapter. FOIA does not apply to these materials. |

**§ 1250.8 Do I need to use FOIA to gain access to records at NARA?**

(a) Most archival records held by NARA have no restrictions to access and are available to the public for research without filing a FOIA request. You may either visit a NARA facility as a researcher to view and copy records or you may write to request copies of specific records. (See Subpart B of 36 CFR part 1256 for more information about how to access archival records).

(b) If you are seeking access to archival records that are not yet available to the public, you will need to file a FOIA request. (See part 1260 for additional procedures for access to security-classified records.)

(c) You must file a FOIA request when you request access to NARA operational records that are not already available to the public. (See § 1256.22 for information on requesting access to restricted archival records.)

(d) If you are requesting records that you know to be classified to protect national security interests, you may wish to use the Mandatory Declassification Review process, which is set forth at § 1260.70.

**§ 1250.10 Does NARA provide access to all the executive branch records housed at NARA facilities?**

(a) NARA provides access to the records NARA creates (operational records) and records originating in the executive branch that have been transferred to the legal custody of the Archivist of the United States (archival records).

(b) NARA's National Personnel Records Center (NPRC), located in St. Louis, Missouri, is the repository of twentieth-century personnel and medical records of former members of the military and of former civilian employees of the Federal government. Those official personnel files that have been transferred to the legal custody of NARA, which occurs when 62 years have passed from the date of separation, are processed by NARA according to §§ 1250.208 through 1250.32 of this part. Those personnel and medical records that remain in the legal custody of the agencies that created them are governed by the FOIA and other access regulations of the creating agencies. The NPRC processes FOIA requests under authority delegated by the originating agencies, not under the provisions of this part.

(c) NARA stores records that agencies no longer need for day-to-day business. These records remain in the legal custody of the agencies that created them. Access to these records should be requested through the originating agency. NARA does not process FOIA requests for these records.

(d) If NARA receives a FOIA request for a record in the legal custody of an originating agency, it will forward that request to the originating agency for processing. NARA will also provide the requester with notification that it has done so and with contact information for the originating agency. (See 36 CFR 1256.2 for more information about how to access records that are stored in a Federal Records Center.)

**§ 1250.12 What types of records are available in NARA's FOIA Library?**

(a) NARA makes available certain materials set forth in the FOIA for public inspection and copying in both its physical FOIA Library as well as the NARA Web site, available at: *http://www.archives.gov/foia/electronic-reading-room.html.*

(b) The materials provided through NARA's FOIA Library include:

(1) Final NARA orders;

(2) Written statements of NARA policy that are not published in the **Federal Register**;

(3) Operational staff manuals and instructions to staff that affect members of the public;

(4) Copies of records requested three or more times under FOIA and other records that have been, or are likely to become, the subject of subsequent FOIA requests for substantially the same records; and

(5) An index, updated quarterly, to these materials.

(c) These materials are available during normal working hours at the NARA facility where the records are located. See 36 CFR part 1253 and NARA's Web site at *http://www.archives.gov/for* a thorough description of NARA facilities and research room procedures.

(d) Any of this material that was created after October 31, 1996, also will be placed on NARA's Web site at *http://www.archives.gov/foia/electronic-reading-room.html.*

(e) For paper copies of the index to these materials write to: NARA FOIA Officer (NGC), Room 3110, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001.

## Subpart B—How To Request Records Under FOIA

**§ 1250.20 What do I include in my FOIA request?**

In your FOIA request:

(a) Describe the records you seek in enough detail to allow NARA staff to find them with a reasonable amount of effort. The more information you provide, the better possibility NARA has of finding the records you are seeking. Information that will help NARA find the records includes:

(1) The agencies, offices, or individuals involved;

(2) The approximate date when the records were created; and

(3) The subject or description of the records sought.

(b) Include your name and full mailing address. If possible, please include a phone number or email address as well. This information will allow us to reach you faster if we have any questions about your request. It is incumbent on the requester to maintain a current mailing address with the office where they have filed the FOIA request.

(c) Mark both your letter and envelope with the words ''FOIA Request.''

(d) In filing your request, you may find it helpful to consult NARA's ''Freedom of Information Act Reference Guide''—which is available electronically at *http://www.archives.gov/foia/foia-guide.html* and in paper form. For a paper copy of NARA's FOIA Guide write to: NARA FOIA Officer (NGC), Room 3110, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. For additional information about the FOIA, you may refer directly to the statute at 5 U.S.C. 552 or visit *http://www.foia.gov*.

**§ 1250.22 Where do I send my FOIA request?**

NARA has several FOIA Customer Service Centers that process FOIA requests. You should send your FOIA request to the appropriate FOIA Customer Service Center that you

believe would have the records you seek.

(a) For requests for archival records in the Washington, DC, area, mail your request to the Chief, Special Access and FOIA Staff (RD–F), Room 5500, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. You may also email them to *Specialaccess_foia@nara.gov*.

(b) For archival records in any of NARA's regional records services facilities, send the FOIA request to the director of the facility in which the records are located. The addresses for these facilities are listed at *http:/www.archives.gov/locations/*.

(c) For Presidential records subject to FOIA, mail your request to the director of the library in which the records are located. The addresses for these facilities are listed at *http:/www.archives.gov/locations/*.

(d) For the operational records of any NARA unit except the Office of the Inspector General, mail your request to the NARA FOIA Officer (NGC), Room 3110, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. You may also email requests to *FOIA@nara.gov,* or submit your requests online at *https://foiaonline.regulations.gov*.

(e) For records of the Inspector General, write to Office of the Inspector General (OIG), FOIA Request, Room 1300, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001.

(f) If you are unable to determine where to send your request, send it to the NARA FOIA Officer (NGC), Room 3110, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. That office will forward your request to the office(s) that is likely to have the records you are seeking. Your request will be considered received when it reaches the proper office's FOIA staff.

(g) If you have questions concerning the processing of your FOIA request, you may contact the designated FOIA Customer Service Center as set forth above in § 1250.22(a)–(f) for the facility processing your request. If that initial contact does not resolve your concerns, you may wish to contact the designated FOIA Public Liaison for the facility processing your request. A list of NARA's FOIA Customer Service Centers and Public Liaisons can be found at *http://www.archives.gov/foia/contacts.html*.

(h) If you do not have access to the internet, you may request the mailing addresses for NARA's FOIA Public Liaisons and Customer Service Centers by writing to: NARA FOIA Officer (NGC), Room 3110, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001.

**§ 1250.24 Will NARA accept a FOIA request electronically?**

Yes. Requests for NARA operational records may be submitted and tracked through the *FOIAonline* program, accessible at *https://foiaonline.regulations.gov,* or by sending an email to *FOIA@nara.gov*. The body of the message must contain all of the information listed in § 1250.20. You may also file a FOIA request by emailing your request to the offices listed in § 1250.22.

**§ 1250.26 How will NARA process my FOIA request?**

(a) NARA will acknowledge all FOIA requests within 20 working days. The acknowledgement letter or email will inform requesters of the tracking number for their request, and any complexity in processing that may lengthen the time required to reach a final decision on the release of the records. The acknowledgement letter may also be used to seek additional information to clarify the request or to ask that the scope of a voluminous request be narrowed. Should any correspondence be unanswered by the requester, or returned as undeliverable, NARA reserves the right to administratively close the FOIA request 60 calendar days after the date of the last correspondence NARA sent. NARA places FOIA requests in a queue to be processed on a first-in, first-out basis.

(b) NARA will make a determination on the release of the records you requested within the 20 working days, but if unusual circumstances prevent making a decision within 20 working days, NARA will inform you in writing with an estimated date of completion. Unusual circumstances include the need to:

(1) Search for and collect the records from field facilities;

(2) Search for, collect, and review a voluminous amount of records that are part of a single request;

(3) Consult with another agency before releasing records; or

(4) Refer records for declassification.

(c) If NARA needs to extend the deadline for more than an additional 10 working days, NARA will ask if you wish to modify your request so that it can answer the request promptly. If you do not agree to modify your request, NARA will work with you to arrange an alternative schedule for review and release.

(d) NARA does not have the authority to declassify and release records containing national security information without the approval of the agencies that have Original Classification Authority for the information contained in the record. NARA will send copies of the documents to the appropriate agencies for declassification review. NARA will send you an initial response to your FOIA request within 20 working days, informing you of this consultation with another agency and upon request an estimated date of completion, except to the extent that the association with the other agency might itself be classified.

(e) If you have requested Presidential or Vice Presidential records and NARA determines that the records are not subject to any applicable FOIA or Presidential Records Act (PRA) exemption and therefore can be released, NARA must inform the current and former President(s) or Vice President(s) of the intention to disclose information from those records. After receiving the notice, and pursuant to the current Executive Order on the implementation of the PRA, the current and former President(s) have a period of time in which to consider whether to invoke Executive Privilege to deny access to the requested information. NARA will send you an initial response to your FOIA request within 20 working days, informing you of the status of your request. However, the final response to your FOIA request can be made only at the end of the Presidential notification period set forth in the Executive Order.

(f) If you have requested records containing confidential commercial information, refer to § 1250.82 for information on how NARA will process that request.

**§ 1250.27 How does NARA determine estimated dates of completion for FOIA requests?**

(a) For a FOIA requester who asks for an estimated date of completion for records that do not require consultation with another agency, NARA will provide the requester with an estimated date of completion based on a reasonable judgment at that point in time as to how long it will take to complete the request. Given the uncertainty inherent in establishing any estimate, the estimated date of completion may be subject to change at any time.

(b) When a FOIA requester asks for an estimated date of completion for records that must be reviewed by another agency, NARA will provide the requester with an estimated date of completion based on a reasonable judgment at that point in time as to how long it will take to complete the request,

which includes the following additional steps:

(1) When sending documents for consultation to another agency, NARA will include in the initial consultation letter to that agency a request for an estimated date of completion.

(2) Estimated dates of completion provided by consulting agencies will be retained in the relevant request file and will be used by NARA to determine the estimated date of completion for the FOIA requester.

(3) If the consulted agency or agencies do not provide NARA with an estimated date of completion, NARA will provide the requester with an estimate based on NARA's general experience working with the agency or agencies and the types and volumes of records at issue.

**§ 1250.28 How do I request expedited processing?**

(a) In certain cases NARA will move your FOIA request or appeal to the head of our FOIA queue. We may grant expedited processing if a requester can show:

(1) A reasonable expectation of an imminent threat to an individual's life or physical safety;

(2) A reasonable expectation of an imminent loss of a substantial due process right; or

(3) An urgent need to inform the public about an actual or alleged Federal government activity (this last criterion applies only to those requests made by a person primarily engaged in disseminating information to the public).

(b) NARA may expedite requests, or segments of requests, only for records over which we have control. If NARA must refer a request to another agency, we will so inform you and suggest that you seek expedited review from that agency. NARA cannot expedite the review of classified records nor can we shorten the Presidential notification period described in § 1250.26(e).

(c) To request expedited processing, you must submit a statement, certified to be true and correct to the best of your knowledge, explaining the basis of your need for expedited processing. All such requests must be sent to the appropriate official at the address listed in § 1250.22. You may request expedited processing when you first request records or at any time during our processing of your request or appeal.

(d) NARA will respond to your request for expedited processing within 10 days of our receipt of your request. If we grant your request, the NARA office responsible for the review of the requested records will process your request as quickly as possible. We will inform you if we deny your request for expedited processing. If you decide to appeal that denial, we will expedite our review of your appeal.

**§ 1250.30 How will NARA respond to my request?**

(a) NARA will send a response that provides the requester with NARA's release determination, including whether any responsive records were located, how much responsive material was located, whether such records have been released in full or withheld in full or in part, where you may review the records, and any fees you must pay for the request.

(b) If NARA denies any part of your request, the response will explain the reasons for the denial, which FOIA exemptions may apply to withhold records, and your right to appeal that determination.

(c) Records may be withheld in full or in part if any of the nine FOIA exemptions apply. NARA will withhold information only where disclosure is prohibited by law (such as information that remains classified, or information that is specifically closed by statute) or where NARA reasonably foresees that disclosure would cause harm to an interest protected by one of the FOIA exemptions. In addition, if only part of a record must be withheld, NARA will provide access to the rest of the information in the record. Information that may be exempt from disclosure under the FOIA is:

| Section of the FOIA: | Reason for exemption: |
|---|---|
| 5 U.S.C. 552(b)(1) | Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified under the Executive order. |
| 5 U.S.C. 552(b)(2) | Related solely to the internal personnel rules and practices of an agency. |
| 5 U.S.C. 552(b)(3) | Specifically exempted from disclosure by statute (other than § 552(b) of this title), provided that the statute:<br>(A) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or<br>(B) Establishes particular criteria for withholding or refers to particular types of matters to be withheld. |
| 5 U.S.C. 552(b)(4) | Trade secrets and commercial or financial information obtained from a person that are privileged or confidential. |
| 5 U.S.C. 552(b)(5) | Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency. |
| 5 U.S.C. 552(b)(6) | Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. |
| 5 U.S.C. 552(b)(7) | Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:<br>(A) Could reasonably be expected to interfere with enforcement proceedings:<br>(B) Would deprive a person of a right to a fair trial or an impartial adjudication;<br>(C) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;<br>(D) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting lawful national security intelligence investigation, information furnished by a confidential source;<br>(E) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or<br>(F) Could reasonably be expected to endanger the life or physical safety of any individual. |
| 5 U.S.C. 552(b)(8) | Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions. |
| 5 U.S.C. 552(b)(9) | Geological and geophysical information and data, including maps, concerning wells. |

(d) Presidential records subject to the FOIA may not be withheld under 5 U.S.C. 552(b)(5) as defined above. However, Presidential records may be withheld under the remaining FOIA exemptions, as well as the six PRA restrictions for a period of 12 years from when a President leaves office, in accordance with 44 U.S.C. 2204 and Part 1270 of these regulations. Presidential records are also subject to review by representatives of the current and former Presidents, who may assert constitutionally-based privileges.

**§ 1250.32 How may I request assistance with the FOIA process?**

(a) For assistance at any point in the FOIA process, you may contact the NARA FOIA Public Liaison. That individual is responsible for assisting to reduce delays, increase transparency and understanding of the status of requests, and assisting to resolve FOIA disputes. A list of NARA's FOIA Customer Service Centers and Public Liaisons can be found at *http://www.archives.gov/foia/contacts.html.*

(b) The Office of Government Information Services (OGIS) serves as the Federal FOIA Ombudsman and assists requesters and agencies to prevent and resolve FOIA disputes. OGIS also reviews agencies' FOIA policies, procedures, and compliance. You may contact OGIS using the information provided in § 1250.78, below.

## Subpart C—Fees

**§ 1250.50 General information on fees.**

(a) General information on fees for archival records

(1) NARA is specifically authorized to charge for copying archival records under a separate fee statute, 44 U.S.C. 2116(c). As a result, archival records are exempt from the FOIA fee waiver provisions, per 5 U.S.C. 552(a)(4)(A)(vi), and NARA does not grant fee waivers for archival records requested under the FOIA. But NARA is able to make most of its archival records available for examination at the NARA facility where the records are located. Whenever this is possible, you may review the records in a NARA research room at that facility free of charge.

(2) NARA does not charge search fees for FOIA requests for archival records, but it does limit the search to two hours.

(3) If requesters would like NARA to supply them with copies of archival records, NARA typically requires requesters to pay all applicable fees in accordance with the fee schedule before it provides the copies. NARA's Fee Schedule for archival records can be found at: *www.archives.gov/research/order/fees.html.*

(b) General information on FOIA fees for operational records.

(1) Requesters seeking access to NARA operational records may be charged search fees even if the records are not releasable or even if NARA does not find any responsive records during its search.

(2) If you are a noncommercial FOIA requester entitled to receive 100 free pages, but the records cannot be copied onto standard-sized (8.5 by 11) photocopy paper, NARA will copy them on larger paper and will reduce the copy fee by the normal charge for 100 standard-sized photocopies. If the records are not on textual media (e.g., photographs or electronic files), we will provide the equivalent of 100 pages of standard-sized paper copies for free.

(3) We will not charge you any fee if the total costs for processing your request are $15 or less.

(4) If estimated search or review fees exceed $50, we will contact you. If you have specified a different limit that you are willing to spend, we will contact you only if we estimate the fees will exceed that specified amount.

(c) General information on fees for all FOIA requests

(1) If you have failed to pay FOIA fees in the past, we will require you to pay your past-due bill before we begin processing your request. If we estimate that your fees may be greater than $250, we may require payment or a deposit before we begin processing your request.

(2) If we determine that you (acting either alone or with others) are breaking down a single request into a series of requests in order to avoid or reduce fees, we may aggregate all these requests in calculating the fees. In aggregating requests, we may consider the subject matter of the requests and whether the requests were filed close in time to one another.

(3) If in the course of negotiating fees a requester does not respond to a NARA component within 60 days, NARA reserves the right to administratively close the FOIA request after 60 calendar days have passed from date of the last correspondence NARA sent.

**§ 1250.52 FOIA fee schedule for operational records.**

In responding to FOIA requests for operational records, NARA will charge the following fees, where applicable, unless we have given you a reduction or waiver of fees under § 1250.56.

(a) *Search fees*—

(1) *Manual searching.* When the search is relatively straightforward and can be performed by a clerical or administrative employee, the search rate is $16 per hour (or fraction thereof). When the request is more complicated and must be done by a NARA professional employee, the rate is $33 per hour (or fraction thereof).

(2) *Computer searching.* This is the actual cost to NARA of operating the computer and the salary of the operator. When the search is relatively straightforward and can be performed by a clerical or administrative employee, the search rate is $16 per hour (or fraction thereof). When the request is more complicated and must be done by a NARA professional employee, the rate is $33 per hour (or fraction thereof).

(b) *Review fees.* (1) Review fees are charged for time spent examining all documents that are responsive to a request to determine whether any FOIA exemptions must be applied to withhold information.

(2) The review fee is $33 per hour (or fraction thereof).

(3) NARA will not charge review fees for time spent resolving general legal or policy issues regarding the application of exemptions.

(c) *Reproduction fees*—

(1) *Self-service photocopying.* At NARA facilities with self-service photocopiers, you may make reproductions of released paper records for $0.25 cents per page.

(2) *Photocopying standard-sized pages.* When NARA produces the photocopies, the charge is $0.30 cents per page.

(3) *Reproductions of electronic records.* The direct costs to NARA for staff time for programming, computer operations, and printouts or electromagnetic media to reproduce the requested information will be charged to requesters. When the work is relatively straightforward and can be performed by a clerical or administrative employee, the rate is $16 per hour (or fraction thereof). When the request is more complicated and must be done by a NARA professional employee, the rate is $33 per hour (or fraction thereof).

(4) *Copying other media.* This is the direct cost to NARA of the reproduction. Specific rates will be provided upon request.

**§ 1250.54 How will NARA calculate FOIA fees for operational records?**

(a) If you are a commercial use requester, NARA will charge you fees for searching, reviewing, and copying responsive records.

(b) If you are an educational or scientific institution requester, or a member of the news media, you are entitled to search time, review time, and

up to 100 pages of copying without charge. NARA will charge copying fees only beyond the first 100 pages.

(c) If you do not fall into either of the categories in paragraphs (a) and (b) of this section, and are an ''other requester,'' you are entitled to two hours of search time, review time, and up to 100 pages of copying without charge. NARA will charge for search time beyond the first two hours and for copying beyond the first 100 pages.

### § 1250.56 How may I request a fee waiver for operational records?

(a) NARA will waive or reduce your fees for NARA operational records only if your request meets both of the following criteria:

(1) The request is in the public interest (i.e., information likely to contribute significantly to public understanding of the operations and activities of the government); and

(2) The request is not primarily in your commercial interest.

(b) To be eligible for a fee waiver or reduction you must explain:

(1) How the requested records pertain to the operations and activities of the Federal government. There must be a clear connection between the identifiable operations or activities of the Federal government and the subject of your request.

(2) How the release will reveal meaningful information about Federal government activities that is not already publicly known.

(3) How disclosure to you will advance the understanding of the general public on the issue.

(4) Your expertise or understanding of the requested records.

(5) How you intend to disseminate the requested information to a broad spectrum of the public.

(6) How disclosure will lead to a significantly greater understanding of the government by the public.

(c) After reviewing your request and determining that there is a substantial public interest in release, NARA will also determine if it furthers your commercial interests. If it does, you are not eligible for a fee waiver.

(d) All requests for fee waivers or reductions must be made at the time of the initial FOIA request. All requests must include the grounds for requesting the reduction or waiver of fees.

## Subpart D—Appeals

### § 1250.70 When may I appeal NARA's FOIA determination?

You may appeal any adverse determination, including:

(a) Refusal to release a record, either in whole or in part;

(b) Determination that a record does not exist or cannot be found;

(c) Determination that the record you sought was not subject to the FOIA;

(d) Denial of a request for expedited processing;

(e) Denial of a fee waiver request; or

(f) Fee category determination.

### § 1250.72 How do I file an appeal?

(a) You may submit your appeal via mail or electronically. All appeals must be in writing and received by NARA within 35 calendar days of the date of NARA's denial letter.

(1) For appeals submitted via mail, you should mark both your letter and envelope with the words ''FOIA Appeal,'' and include a copy of your initial request and NARA's denial.

(i) If NARA's Inspector General denied your request, send your appeal to the Archivist of the United States, (ATTN: FOIA Appeal Staff), Room 4200, National Archives and Records Administration, 8601 Adelphi Road, College Park, Maryland 20740–6001.

(ii) Send all other appeals for denial of access to Federal records to the Deputy Archivist of the United States, (ATTN: FOIA Appeal Staff), Room 4200, National Archives and Records Administration, 8601 Adelphi Road, College Park, Maryland 20740–6001. For Presidential records, appeals should be sent to the appropriate Presidential Library Director at the address listed in 36 CFR 1253.3.

(2) For all appeals submitted electronically, except those regarding Presidential records, send an email to *FOIA@nara.gov.* For Presidential records, electronic appeals must contain all the information listed in § 1250.72 and be sent to the email address of the appropriate Presidential Library. These email addresses are listed in 36 CFR 1253.3. The subject line of the email should read ''PRA/FOIA appeal.''

(b) In your appeal, you may wish to explain why you challenge NARA's determination, for example why NARA should release the records, grant your fee waiver request, or expedite the processing of your request. If NARA was not able to find the records you wanted, explain why you believe NARA's search was inadequate. If NARA denied you access to records and told you that those records were not subject to FOIA, please explain why you believe the records are subject to FOIA.

### § 1250.74 How does NARA process appeals?

(a) NARA will respond to your appeal within 20 working days after its receipt by the appropriate designated appeal official. If NARA reverses or modifies the initial decision, it will inform you in writing and reprocess your request. For Presidential records, if any additional information is released, NARA must follow the notification procedures outlined in 36 CFR § 1250.26(e). If NARA does not change its initial decision, it will respond to you and explain the reasons for the decision, any FOIA exemptions that apply, and your right to judicial review of the decision if information is denied under a FOIA exemption.

(1) An adverse determination by the Archivist or Deputy Archivist will be the final action by NARA; and

(2) NARA will cease processing an appeal if a requester files a FOIA lawsuit.

(b) NARA will notify you of your right to seek judicial review of an adverse determination as set forth in the FOIA at 5 U.S.C. 552(a)(4)(B). If you wish to see judicial review of any adverse determination, you must first appeal it under this section.

(c) NARA will also inform you that the 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. A requester may contact OGIS in any of the following ways: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road—OGIS, College Park, MD 20740, *ogis.archives.gov,* Email: *ogis@nara.gov,* Telephone: 202–741–5770, Facsimile: 202–741–5769, Toll-free: 1–877–684–6448.

## Subpart E—Special Situations

### § 1250.80 How does a submitter identify records containing confidential commercial information?

A submitter of business information will use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers to be protected from disclosure under FOIA Exemption 4. These designations will expire 10 years after the date of the submission unless the submitter requests, and provides justification for, a longer designation period.

### § 1250.82 How does NARA process FOIA requests for confidential commercial information?

If NARA receives a FOIA request for records containing confidential commercial information or for records that it believes may contain confidential commercial information and if the

information is less than 10 years old, NARA will follow these procedures:

(a) If, after reviewing the records in response to a FOIA request, NARA believes that the records should properly be released under FOIA, it will make reasonable efforts to inform the submitter. The notice to the submitter will describe the business information requested or include copies of the requested records.

(b) When the request is for information from a single or small number of submitters, NARA will send a notice via registered mail to the submitter's last known address. NARA's notice to the submitter will include a copy of the FOIA request and will tell the submitter the time limits and procedures for objecting to the release of the requested material.

(c) When the request is for information from a voluminous number of submitters, notification may be made by posting or publishing the notice in a place reasonably likely to inform the submitters of the proposed disclosure.

(d) The submitter will have 10 working days from the receipt of our notice to object to the release and to explain the basis for the objection. The NARA FOIA Officer may extend this period as appropriate.

(e) NARA will review and consider all objections to release that are received within the time limit. If NARA decides to release the records, it will inform the submitter in writing. This notice will include copies of the records as NARA intends to release them and its reasons for deciding to release. NARA will also inform the submitter that it intends to release the records 10 working days after the date of the notice unless a U.S. District Court forbids disclosure.

(f) If the requester files a lawsuit under the FOIA for access to any withheld records, NARA will inform the submitter.

(g) NARA will notify the requester whenever it notifies the submitter of the opportunity to object or to extend the time for objecting.

Dated: July 29, 2013.

**David S. Ferriero,**

*Archivist of the United States.*

[FR Doc. 2013–18872 Filed 8–2–13; 8:45 am]

BILLING CODE 7515–01–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52

**[EPA–R01–OAR–2012–0895; FRL–9841–3]**

## Approval and Promulgation of Air Quality Implementation Plans; Maine; Oxides of Nitrogen Exemption and Ozone Transport Region Restructuring

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve Maine's October 13, 2012, request for an exemption from the nitrogen oxides ($NO_X$) emissions control requirements of the Clean Air Act (CAA or Act) in relation to the 2008 8-hour ozone national ambient air quality standards (standards or NAAQS). EPA's proposed approval of Maine's request is based on a technical demonstration submitted to EPA by Maine's Department of Environmental Protection (ME DEP) showing that $NO_X$ emissions in Maine are not having a significant adverse impact on the ability of any nonattainment area located in the Ozone Transport Region (OTR) to attain the ozone standards during times when elevated ozone levels are monitored in those areas.

Additionally, EPA is also proposing to approve the State of Maine's February 11, 2013 request that EPA approve a ''limited opt-out'' or ''restructuring'' of the Act's OTR requirements pertaining to nonattainment New Source Review (NSR) permitting requirements applicable to major new and modified stationary sources of volatile organic compounds (VOC). EPA is proposing to approve Maine's request because a technical demonstration submitted by ME DEP shows convincingly that the control of VOC emissions throughout the entire State of Maine through implementation of the VOC nonattainment NSR permitting requirements will not significantly contribute to the attainment of the 2008 8-hour ozone standards in any area of the OTR.

**DATES:** Written comments must be received on or before September 4, 2013.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA–R01–OAR–2012–0895 by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. Email: *arnold.anne@epa.gov.*
3. Fax: (617) 918–0047.
4. Mail: ''Docket Identification Number EPA–R01–OAR–2012–0895,'' Anne Arnold, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100 (mail code: OEP05–2), Boston, MA 02109–3912.
5. Hand Delivery or Courier. Deliver your comments to: Anne Arnold, Manager, Air Quality Planning Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100, Boston, MA 02109–3912. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA–R01–OAR–2012–0895. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

*Docket:* All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other

information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at Air Quality Planning Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100, Boston, MA 02109–3912. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

In addition to the publicly available docket materials available for inspection electronically in the Federal Docket Management System at *www.regulations.gov,* and the hard copy available at the Regional Office, which are identified in the **ADDRESSES** section of this **Federal Register**, copies of the state submittal are also available for public inspection during normal business hours, by appointment at the Bureau of Air Quality Control, Department of Environmental Protection, First Floor of the Tyson Building, Augusta Mental Health Institute Complex, Augusta, ME 04333–0017.

**FOR FURTHER INFORMATION CONTACT:** Richard P. Burkhart, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100, Boston, MA 02109–3912, telephone number (617) 918–1664, fax number (617) 918–0664, email *Burkhart.Richard@epa.gov.*

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

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## I. What is EPA proposing?

EPA is proposing to approve two separate requests submitted by the State of Maine. The first request was submitted to EPA on October, 13, 2012, seeking an exemption from the $NO_X$ emissions control requirements contained in section 182(f) of the Act in relation to the 2008 8-hour ozone national ambient air quality standards. More specifically, the emissions control requirements in question are: (1) Any additional $NO_X$ RACT requirements that might be required pursuant to the 2008 8-hour ozone standards; and (2) $NO_X$ nonattainment NSR permitting requirements applicable to new and modified major stationary sources. Maine's SIP already contains language that renders the SIP's $NO_X$ nonattainment NSR permitting requirements inapplicable in any area for which EPA has approved a section 182(f) $NO_X$ exemption, so no SIP revision would be required to implement the exemption from $NO_X$ nonattainment NSR permitting requirements if EPA grants this proposed $NO_X$ waiver. EPA's proposed approval of Maine's request is based on a technical demonstration submitted by Maine's Department of Environmental Protection (ME DEP) showing that $NO_X$ emissions in Maine are not having a significant adverse impact on the ability of any nonattainment area located in the OTR to attain the ozone standards during times when elevated ozone levels are monitored in those areas. Consequently, any additional reductions in $NO_X$ emissions in the State of Maine that would be required under the 2008 8-hour ozone standards, and which would be beyond what Maine's State Implementation Plan (SIP) regulations already provide for, are not necessary for attainment or maintenance of the ozone standards in any areas within the OTR. Thus, because any such $NO_X$ reductions in Maine would be in excess of the emissions necessary for attainment and maintenance of the ozone standards, EPA has determined that those emissions reductions may be exempted under section 182(f) of the Act.

The State's second request, submitted to EPA on February 11, 2013, seeks EPA approval, pursuant to section 176A(a)(2) of the Act, of a ''limited opt-out'' or ''restructuring'' of the OTR requirements set forth in section 182(f) of the Act pertaining to VOC nonattainment NSR permitting requirements. In connection with this latter request, EPA expects to take final action on a request for a SIP revision that the State of Maine has committed to re-submit to EPA after the close of the State's public notice and hearing process on the proposed revision. The SIP revision would conform Maine's SIP to the section 176A(a)(2) restructuring of the VOC nonattainment NSR permitting requirements. The substance of both the OTR restructuring request and the State's proposed SIP revision are available now for review in the docket for this action, so EPA is proposing to approve them both, subject to the State completing its notice and hearing process on the SIP revision.

$NO_X$ RACT and $NO_X$ nonattainment NSR exemption:

The State of Maine is part of the OTR pursuant to section 184(a) of the Act. The entire State of Maine is designated unclassifiable/attainment for the 2008 8-hour ozone standards. (See 40 CFR 81.320.) Sections 182(f) and 184 of the Act, in combination, require states in the OTR, such as Maine, to adopt reasonably available control technology (RACT) regulations for major stationary sources of $NO_X$ and to provide for nonattainment NSR for major new and modified stationary sources of $NO_X$. EPA's proposed approval of Maine's request is based on the State's technical demonstration showing that $NO_X$ emissions in Maine are not having a significant adverse impact on the ability of nonattainment areas located in the OTR to attain and maintain the ozone standards during times when elevated ozone levels are monitored in those areas. Thus, because any such $NO_X$ reductions in Maine would be in excess of the emissions necessary for attainment and maintenance of the ozone standards, EPA has determined that those emissions reductions may be exempted under Section 182(f) of the Act.

*VOC nonattainment NSR restructuring:*

Pursuant to section 176A(a)(2) of the Act, EPA is also proposing to approve the State's February 11, 2013 request to restructure or remove the VOC nonattainment NSR permitting requirements that currently apply in ozone attainment areas solely by virtue of Maine's location in the OTR (all of Maine is designated unclassifiable/attainment with the 2008 8-hour ozone standards). Maine's February 11, 2013 request is based on a ''limited opt-out'' or ''restructuring'' of the OTR requirements under section 176A(a)(2)

of the Act. The State's request is justified by a technical demonstration that clearly supports ME DEP's conclusion that the VOC emissions controlled by the State's nonattainment NSR permitting requirements will not significantly contribute to the attainment of the ozone standards in Maine or in any other area within the OTR.

In connection with this request, EPA expects to take final action on a request for a SIP revision that the State of Maine has committed to re-submit to EPA after the close of the State's public notice and hearing process on the proposed revision. The SIP revision would conform the language of Maine's SIP to the section 176A(a)(2) restructuring of the VOC nonattainment NSR requirements, i.e., render those requirements inapplicable solely by virtue of Maine's location in the OTR. Because all of Maine is designated unclassifiable/attainment for the 2008 8-hour ozone standards, the VOC nonattainment NSR permitting requirements in Maine's SIP would not currently apply anywhere in Maine. EPA will not take final action on Maine's section 176A(a)(2) restructuring request until Maine re-submits the request for a SIP revision described above to EPA. EPA would take final action on the restructuring request and the request for a SIP revision at the same time.

If EPA takes final action approving both of Maine's requests, and in addition approves the request for a SIP revision that the State of Maine has committed to re-submit to EPA, the following consequences would result. First, any $NO_X$ RACT requirements that would otherwise have been necessary in Maine in relation to the 2008 8-hour ozone standard would now not be required to be included in Maine's SIP through a SIP revision. However, $NO_X$ RACT requirements already contained in Maine's SIP for purposes of implementing earlier ozone standards promulgated prior to the 2008 8-hour ozone standard will remain in Maine's SIP. Second, $NO_X$ nonattainment NSR permitting requirements would no longer apply anywhere in the State upon EPA's approval of the $NO_X$ waiver because Maine's currently approved NSR SIP already eliminates NSR for $NO_X$ in areas where EPA has approved a $NO_X$ waiver. Third, the VOC nonattainment NSR permitting requirements, which apply throughout the entire State of Maine, would no longer apply in any area in Maine at this time and would never apply solely by virtue of Maine's location in the OTR. Fourth, for major new and modified stationary sources of VOC and $NO_X$ throughout the entire State of Maine, Maine's PSD permitting requirements would apply in lieu of the nonattainment NSR permitting requirements. The primary differences between the nonattainment NSR and PSD permitting programs are that (1) the emissions threshold at which the permitting requirement is triggered can be higher in the PSD program, (2) the required level of control is more stringent under nonattainment NSR (lowest achievable emission rate (LAER) as compared to best achievable control technology (BACT) under PSD), and (3) emissions offsets must be obtained under nonattainment NSR to account for the new growth, but such emissions offsets are not required under PSD and, instead, sources must demonstrate that their new emissions will not exceed the emissions growth increment available in the area.

## II. What are the Clean Air Act requirements that form the legal basis for EPA's actions?

### *A. $NO_X$ Exemption Under Ssection 182(f) of the Act*

The air quality planning requirements for the reduction of $NO_X$ emissions are set out in section 182(f) of the Act. Section 182(f) requires states with areas designated and classified as moderate nonattainment and above for ozone, or located in ozone transport regions, to impose the same control requirements for major stationary sources of $NO_X$ as apply under the Act to major stationary sources of VOC. These requirements include the adoption of RACT regulations for major stationary sources and the adoption of regulations for nonattainment NSR permitting applicable to major new and modified stationary sources of $NO_X$. Section 182(f)(1) of the Act, however, provides that these requirements do not apply if EPA determines that any of the tests set forth in section 182(f) of the Act are met, i.e., tests based on the relationship of the $NO_X$ emission reductions in question to: (1) Net air quality benefit; (2) contribution to attainment; or (3) net ozone air quality benefits. Further, section 182(f) of the Act provides that EPA may limit the application of the $NO_X$ emissions controls in question if EPA determines that such emissions reductions constitute excess reductions in emissions. If the EPA Administrator determines, under Section 182(f) of the Act, that additional reductions of $NO_X$ are excess for an entire area, the area at issue shall automatically (i.e., a State would not need to submit an exemption request for each requirement) be exempt from the applicable requirements.

On December 26, 1995 (60 FR 66748), EPA approved the State of Maine's section 182(f) $NO_X$ exemption request for counties in northern Maine (specifically, Aroostook, Franklin, Oxford, Penobscot, Piscataquis, Somerset, Washington, Hancock and Waldo Counties) in relation to the 1-hour ozone standard. At this time, the $NO_X$ exemption relating to the 1-hour ozone standard remains in effect as approved by EPA in 1995. In addition, on February 3, 2006 (71 FR 5791), EPA approved a section 182(f) $NO_X$ exemption request for a similar area in Maine (specifically, Aroostook, Franklin, Oxford, Penobscot, Piscataquis, Somerset, Washington, and portions of Hancock and Waldo Counties) in relation to the 1997 8-hour ozone standard. At this time, the $NO_X$ exemption relating to the 1997 8-hour ozone standard remains in effect as approved by EPA in 2006.

EPA's implementation rule for the 1997 8-hour ozone standard (69 FR 23951) requires areas to request a separate section 182(f) $NO_X$ exemption request under the 1997 8-hour ozone standard, even if those areas previously received an exemption under the 1-hour ozone standard. Because EPA has not yet issued a final implementation rule for the 2008 8-hour ozone standard,[1] EPA has decided to follow the same approach as was taken in transitioning from the 1-hour ozone standards to the 1997 8-hour ozone standards, i.e., a state must request a separate $NO_X$ exemption for the new 2008 8-hour ozone standards, even if that state had already been granted a $NO_X$ exemption under section 182(f) under the 1997 8-hour ozone standard.

### *B. OTR Restructuring Request of the VOC Nonattainment NSR Permitting Requirements*

Sections 172(c)(5) and 173 of the Act together contain the SIP permitting requirements applicable to new or modified major stationary sources in nonattainment areas. Section 184(b)(2) of the Act, relating to emissions control requirements applicable in ozone transport regions, provides that stationary sources that emit or have the potential to emit at least 50 tons per year of VOC are subject to the requirements which would apply to major stationary sources under the Act if the area were classified as a moderate nonattainment area. These provisions of

[1] EPA published in the **Federal Register** on June 6, 2013 (78 FR 34178) a proposed implementation rule that would follow the same approach.

the Act, in combination, resulted in the promulgation of the State of Maine's VOC nonattainment NSR SIP permitting requirements relevant to EPA's proposed action here. EPA's proposed approval of the State of Maine's OTR restructuring request, if finalized in a subsequent rulemaking in combination with action on a SIP revision, would mean that the VOC nonattainment NSR permitting requirements would no longer apply in the State of Maine on the sole basis that Maine is located in the OTR. The SIP's nonattainment NSR permitting requirements applicable to VOC sources will remain in the SIP but would only apply in ozone nonattainment areas, if EPA finalizes its approval of the section 176A(a)(2) restructuring request and approves the corresponding SIP revision. As a practical matter, however, because all areas in Maine are designated unclassifiable/attainment for the 2008 8-hour ozone standards, the VOC nonattainment NSR permitting requirements in the SIP would only apply if an area in Maine is designated nonattainment.

Section 176A of the Clean Air Act is entitled ''Interstate Transport Commissions,'' and contains the criteria upon which areas that are part of interstate transport regions may be added or removed from such transport regions. Section 176A(a)(2) provides that the EPA Administrator may remove any State or portion of a State from an interstate transport region, in this case the OTR, whenever the Administrator has reason to believe that control of emissions in that State or portion of the State pursuant to the Act's requirements for that interstate transport region will not significantly contribute to attainment of a NAAQS in that interstate transport region. Implicit in EPA's authority to remove a State or a portion of a State from the OTR in its entirety, is the authority to eliminate or ''restructure'' specific emissions control requirements for a State that remains in the OTR, provided that such State demonstrates that the control of emissions from such requirements will not significantly contribute to attainment of the ozone standards anywhere in the OTR. EPA's proposed action under section 176A(a)(2) of the Act meets this requirement because the State of Maine has demonstrated that the control of VOC emissions through implementation of the nonattainment NSR permitting requirements will not significantly contribute to attainment of the ozone standards in the OTR. EPA previously has used this statutory authority to approve requests by the States of Maine and New Hampshire to restructure those states' motor vehicle inspection and maintenance (I/M) requirements, on January 10, 2001. See 66 FR 1868 and 66 FR 1871, respectively.

## III. What is the scope of the $NO_X$ exemption under section 182(f) of the Act?

Section 182(f) provides that if the EPA Administrator determines that additional reductions of $NO_X$ are excess, the area in question shall be exempt from the following requirements (as applicable): motor vehicle inspection and maintenance (I/M) program $NO_X$ requirements; the $NO_X$-related general conformity provisions; the $NO_X$-related transportation conformity provisions in 40 CFR part 93; $NO_X$ RACT; and nonattainment area NSR for major new sources and modifications of $NO_X$. (See Section 182(f) of the Act, 40 CFR 51.351(d) for I/M, 40 CFR 93.119(f)(2) for transportation conformity and 40 CFR 93.199 (f)(2) for general conformity.) If the EPA Administrator determines, under Section 182(f) of the Act, that additional reductions of $NO_X$ are excess for an entire area, the area at issue shall automatically (i.e., a State would not need to submit an exemption request for each requirement) be exempt from the applicable requirements.

Consequently, if EPA finalizes its approval of Maine's request for a section 182(f) $NO_X$ exemption, Maine need not modify its $NO_X$ control SIP provisions to address any new emissions controls required in relation to the 2008 8-hour ozone standard, including I/M.[2] Also, because the entire State of Maine is now designated unclassifiable/attainment for the 2008 8-hour ozone standard, transportation conformity for the 2008 8-hour ozone standard (See 40 CFR 93.102(b)) and general conformity in relation to the 2008 8-hour ozone standard (See 40 CFR 93.153) do not apply. EPA's proposed action on Maine's October 13, 2012 section 182(f) request for a $NO_X$ exemption, if finalized, would have no impact on I/M or conformity requirements in Maine. Furthermore, if EPA's proposed approval of Maine's section 182(f) $NO_X$ exemption request is finalized, any $NO_X$ RACT requirements that would otherwise have been necessary in Maine in relation to the 2008 8-hour ozone standard would not be required (although $NO_X$ RACT requirements already contained in Maine's existing SIP for purposes of implementing prior ozone standards will remain in Maine's SIP). Finally, $NO_X$ nonattainment NSR permitting requirements would no longer apply anywhere in the State. If EPA's action on Maine's request is finalized, major new and modified stationary sources of $NO_X$ would be subject to the Maine SIP's PSD permitting requirements in lieu of the $NO_X$ nonattainment NSR permitting requirements. The primary differences between those two permitting requirements are described earlier in this notice of proposed rulemaking.

## IV. What is the scope of the proposed VOC nonattainment NSR restructuring under section 176A(a)(2) of the Act?

All areas in the State of Maine are designated unclassifiable/attainment for the 2008 8-hour ozone standard. Consequently, the effect of the proposed VOC nonattainment NSR restructuring in combination with the planned SIP revision, will be that the Maine SIP's PSD regulations, applicable to permitting major new or modified stationary sources of regulated NSR pollutants including VOC, would apply in lieu of the State's nonattainment NSR permitting requirements in every area within the State. The VOC nonattainment NSR permitting requirements currently part of Maine's SIP would no longer be applicable anywhere in the State solely by virtue of Maine's location in the OTR. The primary differences between those two permitting requirements are described earlier in this notice of proposed rulemaking.

## V. What are the technical criteria EPA used to evaluate Maine's requests?

EPA's criteria for the evaluation of a request for a section 182(f) $NO_X$ exemption are set forth in a memorandum from Stephen D. Page, Director, OAQPS, dated January 14, 2005, entitled ''Guidance on Limiting Nitrogen Oxides Requirements Related to 8-Hour Ozone Implementation.'' As explained earlier in this notice of proposed rulemaking, EPA evaluated Maine's technical demonstration and has concluded that the demonstration shows that $NO_X$ emissions in Maine are not having a significant adverse impact on the ability of any nonattainment area located in the OTR to attain or maintain the ozone standards during times when elevated ozone levels are monitored in those areas. EPA is therefore proposing to approve Maine's request for a section 182(f) $NO_X$ exemption.

EPA's criteria for opting out of the OTR are set forth in a memorandum from John S. Seitz, Director, OAQPS,

[2] As noted earlier in this notice of proposed rulemaking, Maine also received a ''limited opt-out'' or ''restructuring'' of the Act's I/M requirements in 2001 pursuant to section 176A(a)(2) of the Act.

dated May 25, 1995, and entitled ''Technical Guidance for Removing Areas From the Northeast Ozone Transport Region (OTR).'' As noted earlier in this notice of proposed rulemaking, EPA evaluated Maine's technical demonstration and determined that Maine's demonstration shows that the control of VOC emissions through implementation of the nonattainment NSR permitting requirements in Maine will not significantly contribute to attainment of the ozone standard anywhere in the OTR. EPA is therefore proposing to approve Maine's request for a section 176A(a)(2) restructuring of the VOC nonattainment NSR permitting requirements.

## VI. What was included in the State of Maine's requests?

As noted earlier, Maine submitted a technical demonstration with its request for a section 182(f) $NO_X$ exemption showing that $NO_X$ emissions in Maine are not having a significant adverse impact on the ability of any nonattainment area located in the OTR to attain or maintain the ozone standards during times when elevated ozone levels are monitored in those areas.

For the State's section 176A(a)(2) VOC nonattainment NSR restructuring request, Maine's technical demonstration showed that the control of emissions from those permitting requirements will not significantly contribute to the attainment of the 2008 8-hour ozone standard in any area in the OTR.

The State's submittals include detailed technical analyses for VOC and $NO_X$ emissions in the State, including an analysis of whether emissions from Maine impact areas in the OTR. The State's technical analyses rely on several different techniques used to analyze those emissions and their impacts, the primary technique being back trajectories using the HYSPLIT trajectory model.

For the section 182(f) $NO_X$ exemption and the VOC nonattainment NSR restructuring requests, ME DEP air quality meteorologists conducted air trajectory analyses of days during the 2009 through 2011 ozone seasons at times when elevated ozone levels were monitored. The analyses were conducted for monitoring sites in the ozone nonattainment areas closest to Maine, in the State of Connecticut and on Martha's Vineyard, Massachusetts. The air trajectories used by ME DEP are four-dimensional representations of the path an air parcel follows, in time, based on archived surface and upper-level meteorological data. A back trajectory, as used by ME DEP in this case, is the path the parcel takes to reach a specific point in time and space. ME DEP created a back trajectory for each hour that ozone levels were equal to or greater than 75 parts per billion (ppb) for every day that the 2008 ozone standard was exceeded (i.e., ozone levels exceeded 0.075 parts per million (or 75 ppb) on an 8-hour average basis) and recorded in the State of Connecticut and in Martha's Vineyard, Massachusetts. For each such instance, 24-hour back trajectories from 10, 150 and 250 meters above ground level were created.

ME DEP used the National Oceanic and Atmospheric Administration (NOAA) Air Resources Laboratory's HYSPLIT model to create and map the trajectories. The HYSPLIT model uses gridded meteorological data, which is selected within the on-line model's graphical user interface. For more information about HYSPLIT please refer to the following document by Roland R. Draxler and G.D. Hess: *Description of the HYSPLIT 4 Modeling System.* (See *http://www.arl.noaa.gov/documents/reports/arl-224.pdf.*) ME DEP staff meteorologists used the on-line version of the HYSPLIT model to create the trajectories used in the DEP's analyses. Archived ETA Data Assimilation System (EDAS) meteorological data at 40 kilometers (km) was used because that data set had the best resolution and had an excellent data recovery rate.

ME DEP provided to EPA a map of HYSPLIT back trajectories calculated for all hours when ozone monitoring sites in the State of Connecticut and in Martha's Vineyard, Massachusetts exceeded the 2008 ozone standards. That map clearly shows that emissions from Maine do not have a significant adverse impact on the ability of any nonattainment area located in the OTR to attain and maintain the 2008 8-hour ozone standards, because none of the dozens of plotted back trajectories originate in Maine or even traverse any portion of Maine. Therefore, the analysis demonstrates convincingly that $NO_X$ and VOC emissions in Maine will not significantly contribute to attainment of the ozone standards anywhere in the OTR.

In addition to the trajectories discussed above, Maine also provided in its request for VOC nonattainment NSR restructuring information from several ozone modeling analyses conducted by EPA for the eastern United States. Maine's submission referenced EPA photochemical modeling for: (1) The $NO_X$ SIP call (63 FR 57356: October 27, 1998); (2) the Clean Air Interstate Rule (CAIR) (70 FR 25162; May 12, 2005); and (3) the Cross State Air Pollution Rule (CSAPR) (76 FR 48208; August 8, 2011). Table 1 below contains a summary of those EPA modeling results for the State of Maine. With regard to $NO_X$ emissions in Maine, the detailed photochemical ozone modeling for these three programs shows that emissions of $NO_X$ in the State of Maine do not have a significant adverse impact on the ability of any ozone nonattainment areas in the OTR to attain or maintain the 2008 8-hour ozone standards.[3] With regard to VOC emissions in Maine, the detailed photochemical ozone modeling shows that control of emissions of VOC in Maine do not significantly contribute to the attainment of the 2008 8-hour ozone standard in any area of the OTR.

TABLE 1—MAINE'S MODELED IMPACTS (PPB) ON MASSACHUSETTS AND CONNECTICUT 8-HOUR OZONE NONATTAINMENT AREAS

| State | $NO_X$ SIP call | Clean air interstate program | Cross state air pollution regulation |
|---|---|---|---|
| Connecticut | 0 | 0.1 | 0.141 |
| Massachusetts (Dukes County) | # 0 | # 0.3 | 0.015 |

# Note that Dukes County, Massachusetts was not modeled for these two programs so the impact to Rhode Island was used because it is representative of the Massachusetts Dukes County nonattainment area. Dukes County, Massachusetts consists of several islands in Nantucket Sound, the largest of which is Martha's Vineyard.

[3] Although the CSAPR rule was vacated (*See EME Homer City Generation, L.P.* v. *EPA,* No. 11–1302 (D.C. Cir. August 21, 2012), nothing in the opinion disturbs or calls into question that conclusion or the validity of the air quality modeling on which the conclusion is based.

## VII. What is EPA's evaluation of Maine's requests?

Based on the ME DEP's technical analyses discussed above, EPA believes that the State has demonstrated convincingly that control of emissions of VOC in Maine do not significantly contribute to the attainment of the 2008 8-hour ozone standard in any area in the OTR. Such demonstration is sufficient to support Maine's section 176A(a)(2) VOC nonattainment NSR restructuring request. Based on those same technical analyses, EPA has determined that the State has demonstrated convincingly that emissions of $NO_X$ in Maine are not having a significant adverse impact on the ability of any ozone nonattainment areas in the OTR to attain or maintain the ozone standards during times when elevated ozone levels are monitored in those areas. Such demonstration is also sufficient to support Maine's request for a $NO_X$ exemption under section 182(f).

Consequently, EPA is proposing to approve both the State's request for an exemption from the section 182(f) $NO_X$ requirements and the State's request to restructure or obtain a ''limited opt-out'' of the Act's VOC nonattainment NSR requirements relating to the OTR.

## VIII. Which provisions did Maine request be removed by EPA from the SIP?

In its February 11, 2013 request to EPA, Maine requested that EPA remove specific language from certain parts of its SIP consistent with the State's request under section 176A(a)(2) for VOC nonattainment NSR restructuring. By letter dated July 5, 2013, Maine committed to provide notice and an opportunity for a hearing on the proposed SIP revisions and to resubmit its request for a SIP revision after the public participation process concludes. As noted earlier, Maine's existing SIP provisions contain language that will be consistent with a section 182(f) $NO_X$ exemption in relation to the 2008 8-hour ozone standards, but Maine's request for a SIP revision would nonetheless also affect the applicability of $NO_X$ nonattainment NSR in Maine as explained below.

$NO_X$ exemption under section 182(f).

If EPA takes final action to approve Maine's section 182(f) request, EPA's approval would apply to all areas within the State of Maine and $NO_X$ nonattainment NSR would not apply anywhere in Maine because: (1) All areas in Maine are designated attainment for the 2008 8-hour ozone standards; and (2) Maine's existing SIP states that $NO_X$ nonattainment NSR does not apply in any area for which EPA has approved a section 182(f) $NO_X$ exemption. The State's proposed SIP revision would, however, also affect $NO_X$ nonattainment NSR in Maine because a source's location in the OTR would be removed from the SIP as the sole basis for applicability of those requirements, i.e., $NO_X$ nonattainment NSR would no longer apply in attainment areas in Maine by virtue of the State being part of the OTR.

VOC nonattainment NSR restructuring under section 176A(a)(2).

As noted above, in its February 11, 2013 request to EPA, Maine requested that EPA remove specific language from certain parts of its SIP consistent with the State's request under section 176A(a)(2) for VOC nonattainment NSR restructuring. Subsequently, by letter dated July 5, 2013, Maine committed to provide notice and an opportunity for a hearing on the proposed SIP revisions and to resubmit its request to EPA for a SIP revision after the public participation process concludes. Because all areas in Maine are designated attainment for the 2008 ozone standards, the Maine SIP's VOC nonattainment NSR permitting requirements only now apply in Maine because Maine is part of the OTR. Thus, the language that would be removed from Maine's SIP imposes requirements that now apply only by virtue of a source's location within the OTR. As noted earlier in this notice of proposed rulemaking, EPA will not take final action on the State's request for a SIP revision until: (1) The State's public participation process on the revisions has concluded and the State has resubmitted its request for a proposed SIP revision to EPA; and (2) until such time as EPA takes final action on the State's request for the section 176A(a)(2) VOC nonattainment NSR restructuring.

The SIP revision would affect specific parts of two chapters of Maine's nonattainment NSR permitting regulations previously approved by EPA into the SIP. The first is Chapter 113 entitled ''Growth Offset Regulations'' which contains emissions offsets requirements for sources subject to nonattainment NSR. The second is Chapter 115 entitled ''Emission License Regulation'' which includes generally applicable requirements for sources that must obtain an emissions license in Maine. EPA last approved amendments to Chapters 113 and 115 on February 14, 1996 (61 FR 5690). If EPA takes final action to approve Maine's section 182(f) $NO_X$ exemption request and section 176A(a)(2) request for VOC nonattainment NSR restructuring, the Maine SIP provisions pertaining to nonattainment NSR permitting requirements for ozone arising from Maine's location in the OTR will no longer be necessary under 40 CFR 51.165. EPA is proposing to approve Maine's request to remove the SIP provisions contained in Chapters 113 and 115 of Maine's regulations that impose nonattainment NSR for sources of VOC on the basis of the source's location in the OTR.

More specifically, EPA is proposing to remove from Chapter 113 all references to the OTR as a basis for the applicability of VOC nonattainment NSR permitting requirements. Those references appear in section 1 (Applicability), section 2.C.1 (Ozone Nonattainment Areas), section 2.C.2 (Ozone Nonattainment Areas, Location of offsets), and section 3 (Exemptions). EPA also is proposing to remove references in Chapter 113 to the permissible location of emissions offsets for attainment areas (these provisions for attainment areas are only relevant if location in the OTR is a basis for nonattainment NSR applicability). These references appear in sections 2.C.3 (Ozone Nonattainment Areas) and 2.C.3.b. (Ozone Nonattainment Areas) of Chapter 113, and will not be relevant if the section 176A(a)(2) restructuring is approved, because new or modified major stationary sources of VOC located in areas attaining the ozone standard will no longer be required to obtain offsets. In Chapter 115, EPA proposes to remove the reference to the OTR in Sections V.B.2 (Criteria for Granting a License) and VI.B.2 (New sources and modifications, Nonattainment areas).

If EPA takes final action approving the State's requests for a section 182(f) $NO_X$ exemption and a section 176A(a)(2) restructuring (and the associated SIP revisions described above), the Maine SIP's PSD permitting requirements would apply in lieu of the SIP's nonattainment NSR permitting requirements for any major new or modified stationary source of VOC and/or $NO_X$ located anywhere in the State of Maine.

EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA New England Regional Office listed in the **ADDRESSES** section of this notice.

## IX. Proposed Actions

EPA is proposing to approve Maine's October 13, 2012 request for an exemption from the requirements for the control of $NO_X$ emissions contained in

section 182(f) of the Act in relation to the 2008 8-hour ozone standards. The exemption would apply throughout the entire State of Maine. EPA is also proposing to approve Maine's February 11, 2013 request for a limited ''opt-out'' or ''restructuring'' of the section 182(f) OTR requirements pertaining to VOC nonattainment NSR permitting, currently applicable in Maine only by virtue of Maine's location in the OTR, not by virtue of Maine having any areas designated nonattainment for the 2008 8-hour ozone standards. In addition, EPA is proposing to approve Maine's request for the SIP revisions described earlier in this notice.

If EPA takes final action to approve Maine's requests, including the SIP revisions described above, the following consequences would result. First, any $NO_X$ RACT requirements that would otherwise have been necessary in Maine in relation to the 2008 8-hour ozone standard would now not be required. However, any $NO_X$ and/or VOC requirements earlier approved into Maine's SIP to implement regional haze requirements or requirements relating to prior, pre-2008, ozone standards, will remain in Maine's SIP. Second, nonattainment NSR permitting requirements for major new or modified stationary sources of $NO_X$ in Maine would no longer apply anywhere in the State. Third, the nonattainment NSR permitting requirements applicable to major new and modified stationary sources of VOC, which now apply throughout the entire State of Maine, would no longer apply in any area in Maine. Fourth, for major new and modified stationary sources of VOC and $NO_X$ throughout the entire State of Maine, the Maine SIP's PSD permitting requirements would apply in lieu of the nonattainment NSR permitting requirements. Finally, the requirements applicable to sources holding existing nonattainment NSR permits will remain in effect.

As part of this action, EPA is proposing to revise certain provisions in Maine's SIP. The SIP revisions would affect specific parts of two chapters of Maine's nonattainment NSR permitting regulations previously approved by EPA into the SIP. The first is Chapter 113 entitled ''Growth Offset Regulations'' which contains emissions offsets requirements for sources subject to nonattainment NSR. The second is Chapter 115 entitled ''Emission License Regulation'' which includes generally applicable requirements for sources that must obtain an emissions license in Maine. More specifically, EPA is proposing to remove from Chapter 113 all references to the OTR as a basis for the applicability of VOC nonattainment NSR permitting requirements. Those references appear in section 1 (Applicability), section 2.C.1 (Ozone Nonattainment Areas), section 2.C.2 (Ozone Nonattainment Areas, Location of offsets), and section 3 (Exemptions). EPA also is proposing to remove references in Chapter 113 to the permissible location of emissions offsets for attainment areas (these provisions for attainment areas are only relevant if location in the OTR is a basis for nonattainment NSR applicability). These references appear in sections 2.C.3 (Ozone Nonattainment Areas) and 2.C.3.b. (Ozone Nonattainment Areas) of Chapter 113, and will not be relevant if the section 176A(a)(2) restructuring is approved, because new or modified major stationary sources of VOC located in areas attaining the ozone standard will no longer be required to obtain offsets. In Chapter 115, EPA proposes to remove the reference to the OTR in Sections V.B.2 (Criteria for Granting a License) and VI.B.2 (New sources and modifications, Nonattainment areas).

## X. Statutory and Executive Order Reviews

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

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

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

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

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 18, 2013.

**H. Curtis Spalding,**

*Regional Administrator, EPA New England.*

[FR Doc. 2013–18831 Filed 8–2–13; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R10–OAR–2013–0088; FRL–9841–6]**

## Approval and Promulgation of Implementation Plans; Washington: Thurston County Second 10-Year $PM_{10}$ Limited Maintenance Plan

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

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing to approve a limited maintenance plan submitted by the State of Washington on July 1, 2013, for the Thurston County maintenance area (Thurston County) for particulate matter with an aerodynamic diameter less than or equal to a nominal

10 micrometers ($PM_{10}$). The EPA is also proposing to approve both local and state regulatory updates related to this maintenance plan.

**DATES:** Comments must be received on or before September 4, 2013.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R10–OAR–2013–0088, by any of the following methods:

A. *www.regulations.gov:* Follow the on-line instructions for submitting comments.

B. *Mail:* Jeff Hunt, EPA Region 10, Office of Air, Waste and Toxics (AWT–107), 1200 Sixth Avenue, Suite 900, Seattle WA, 98101

C. *Email: R10-Public_Comments@epa.gov*

D. *Hand Delivery:* EPA Region 10 Mailroom, 9th Floor, 1200 Sixth Avenue, Suite 900, Seattle WA, 98101. Attention: Jeff Hunt, Office of Air, Waste and Toxics, AWT–107. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information

*Instructions:* Direct your comments to Docket ID No. EPA–R10–OAR–2013–0088. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the electronic docket are listed in the *www.regulations.gov index.* Although listed in the index, some information is not publicly available, i.e., CBI or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle WA, 98101.

**FOR FURTHER INFORMATION CONTACT:** Jeff Hunt at (206) 553–0256, *hunt.jeff@epa.gov,* or by using the above EPA, Region 10 address.

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever ''we'', ''us'' or ''our'' are used, it is intended to refer to the EPA.

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## I. This Action

The EPA is proposing to approve the limited maintenance plan submitted by the State of Washington (the State) on July 1, 2013, for Thurston County, including approval of a monitoring system modification for the area. The limited maintenance plan also includes Washington State Department of Ecology (Ecology) regulatory changes that strengthen the control measures contained in the State Implementation Plan (SIP) since our last approval on January 15, 1993 (58 FR 4578). In addition to the state regulatory changes, the EPA is proposing to approve corresponding local regulations adopted by the Olympic Region Clean Air Agency (ORCAA) because they have direct implementation authority in Thurston County. Lastly, the EPA is proposing to remove Chapter 173–433–170 Washington Administrative Code (WAC) *Retail Sales Fee* from the SIP because this provision was not a control measure relied on for attainment or a required element of the SIP. The EPA has determined that removal of this provision will not interfere with continued attainment and maintenance of the standard. Similarly, the EPA is proposing to remove Chapter 173–433–200 WAC *Regulatory Actions and Penalties* from the SIP incorporated by reference in 40 CFR 52.2470. The EPA reviews and approves state submissions to ensure they provide adequate enforcement authority. However, regulations describing agency enforcement authority are not incorporated into the SIP to avoid potential conflict with the EPA's independent authorities. Likewise, the EPA has reviewed and is proposing approval of ORCAA Rule 8.1.6 *Penalties* as having adequate enforcement authority, but will not incorporate this section by reference into the SIP codified in 40 CFR 52.2470.

## II. Background

The EPA identified a portion of Thurston County as a ''Group I'' area of concern due to measured violations of the newly promulgated 24-hour $PM_{10}$ National Ambient Air Quality Standard (NAAQS) on August 7, 1987 (52 FR 29383). Ecology and ORCAA worked with the communities of Lacey, Olympia, and Tumwater to develop a plan for attainment of the $PM_{10}$ NAAQS. The plan was focused on wood smoke reduction and was submitted in November 1988. On November 15, 1990, the Clean Air Act (CAA) Amendments under section 107(d)(4)(B), designated the Thurston County Group I area as nonattainment for $PM_{10}$ by operation of law. The EPA published a **Federal Register** notice announcing all areas designated nonattainment for $PM_{10}$ on March 15, 1991 (56 FR 11101). In order to address the additional moderate area requirements imposed by the 1990 CAA Amendments, Ecology submitted a supplement to the attainment plan in November 1991. EPA took final action to approve the entire plan on July 27, 1993 (58 FR 40056).

The control measures contained in the Thurston County plan rapidly brought the area into attainment by 1991 and

formed the foundation of the wood smoke reduction program still in use today. As $PM_{10}$ levels in the area steadily declined, the EPA redesignated the Thurston County nonattainment area to a maintenance area on October 4, 2000 (65 FR 59128). In addition to approving Ecology's redesignation request for the area, the EPA also approved a maintenance plan to ensure continued compliance with the $PM_{10}$ NAAQS for ten years. The purpose of the current limited maintenance plan is to fulfill the second 10-year planning requirement of Clean Air Act section 175A (b) to ensure compliance through 2020.

## III. Public and Stakeholder Involvement in Rulemaking Process

Section 110(a)(2) of the Clean Air Act requires that each SIP revision offer a reasonable opportunity for notice and public hearing. This must occur prior to the revision being submitted by the State to the EPA. The State provided notice and an opportunity for public comment beginning April 22, 2013, with no comments received. Under the requirements of 40 CFR 51.102(a), the State also offered an opportunity for a public hearing; however no requests were received. This SIP revision was submitted by the Governor's designee and was received by the EPA on July 1, 2013. The EPA evaluated Ecology's submittal and determined that the State met the requirements for reasonable notice and public hearing under section 110(a)(2).

## IV. The Limited Maintenance Plan Option for $PM_{10}$ Areas

### *A. Requirements for the Limited Maintenance Plan Option*

On August 9, 2001, the EPA issued guidance on streamlined maintenance plan provisions for certain moderate $PM_{10}$ nonattainment areas (Memo from Lydia Wegman, Director, Air Quality Standards and Strategies Division, entitled ''Limited Maintenance Plan Option for Moderate $PM_{10}$ Nonattainment Areas'' (limited maintenance plan option memo). The limited maintenance plan option memo contains a statistical demonstration that areas meeting certain air quality criteria will, with a high degree of probability, maintain the standard ten years into the future. Thus, the EPA provided the maintenance demonstration for areas meeting the criteria outlined in the memo. It follows that future year emission inventories for these areas, and some of the standard analyses to determine transportation conformity with the SIP, are no longer necessary.

To qualify for the limited maintenance plan option the State must demonstrate the area meets the criteria described below. First, the area should have attained the $PM_{10}$ NAAQS. Second, the most recent five years of air quality data at all monitors in the area, called the 24-hour average design value, should be at or below 98 μg/m³. Third, the State should expect only limited growth in on-road motor vehicle $PM_{10}$ emissions (including fugitive dust) and should have passed a motor vehicle regional emissions analysis test. Lastly, the memo identifies core provisions that must be included in all limited maintenance plans. These provisions include an attainment year emissions inventory, assurance of continued operation of an EPA-approved air quality monitoring network, and contingency provisions.

### *B. Conformity Under the Limited Maintenance Plan Option*

The transportation conformity rule and the general conformity rule (40 CFR parts 51 and 93) apply to nonattainment areas and maintenance areas covered by an approved maintenance plan. Under either conformity rule, an acceptable method of demonstrating a Federal action conforms to the applicable SIP is to demonstrate that expected emissions from the planned action are consistent with the emissions budget for the area.

While qualification for the limited maintenance plan option does not exempt an area from the need to affirm conformity, conformity may be demonstrated without submitting an emissions budget. Under the limited maintenance plan option, emissions budgets are treated as essentially not constraining for the length of the maintenance period because it is unreasonable to expect that the qualifying areas would experience so much growth in that period that a violation of the $PM_{10}$ NAAQS would result. For transportation conformity purposes, the EPA would conclude that emissions in these areas need not be capped for the maintenance period and therefore a regional emissions analysis would not be required. Similarly, Federal actions subject to the general conformity rule could be considered to satisfy the ''budget test'' specified in 40 CFR 93.158 (a)(5)(i)(A) for the same reasons that the budgets are essentially considered to be unlimited.

## V. Review of the State's Submittal

### *A. Has the State demonstrated that Thurston County qualifies for the limited maintenance plan option?*

As discussed above, the limited maintenance plan option memo outlines the requirements for an area to qualify. First, the area should be attaining the NAAQS. Thurston County has been attaining the NAAQS since 1991. EPA formally redesignated the area from nonattainment to attainment, making it a maintenance area effective December 4, 2000 (65 FR 59128).

Second, the average design value for the past five years of monitoring data must be at or below the critical design value of 98 μg/m³ for the 24-hour $PM_{10}$ NAAQS. The critical design value is a margin of safety in which an area has a one in ten probability of exceeding the NAAQS. Using the most recently available Federal Reference Method (FRM) monitoring data for the years 2001–2005, the State's analysis demonstrated that Thurston County's average design value was 60 μg/m³, well below the 98 μg/m³ threshold. An FRM monitor is one that has been approved by the EPA under 40 CFR part 58 to measure compliance with the NAAQS. As discussed later in this proposal, Ecology and ORCAA also calculated average design values using more recent non-FRM nephelometer data for the period 2008 to 2012. This more recent monitoring data shows that $PM_{10}$ levels continued to decline with an average design value of 45 μg/m³. The EPA reviewed the data provided by Ecology and ORCAA and finds that Thurston County meets the design value criteria outlined in the limited maintenance plan option memo.

Third, the area must meet the motor vehicle regional emissions analysis test described in attachment B of the limited maintenance plan option memo. Ecology submitted an analysis showing that growth in on-road mobile $PM_{10}$ emissions sources was minimal and would not threaten the assumption of maintenance that underlies the limited maintenance plan policy. Using the EPA's methodology, Ecology calculated a regional emissions analysis margin of safety of 62 μg/m³, easily meeting the threshold of 98 μg/m³. The EPA reviewed the calculations in the State's limited maintenance plan submittal and concurs with this conclusion.

Lastly, the limited maintenance plan option memo requires all controls relied on to demonstrate attainment remain in place for the area to qualify. The controls on wood smoke reduction, Chapter 173–433 WAC *Solid Fuel Burning Device Standards,* were

approved by the EPA into the SIP on January 15, 1993 (58 FR 4578). As discussed later in this proposal, Ecology made updates to Chapter 173–433 WAC strengthening the control measures since the EPA's last approval. The EPA reviewed these changes and confirmed that the underlying control measures remain in place, thus qualifying for the limited maintenance plan option.

As described above, Thurston County meets the qualification criteria set forth in the limited maintenance plan option memo. Under the limited maintenance plan option, the State will be expected to determine on an annual basis that the criteria are still being met. If the State determines that the limited maintenance plan criteria are not being met, it should take action to reduce $PM_{10}$ concentrations enough to requalify. One possible approach the State could take is to implement contingency measures. Section V. I. provides a description of contingency provisions submitted as part of the limited maintenance plan submittal. To insure this requirement is met, Ecology commits to reporting to the EPA on continued qualification for the limited maintenance plan option in the annual monitoring network report.

*B. Does the State have an approved attainment emissions inventory?*

Pursuant to the limited maintenance plan option memo, the State's approved attainment plan should include an emissions inventory which can be used to demonstrate attainment of the NAAQS. The inventory should represent emissions during the same five-year period associated with air quality data used to determine whether the area meets the applicability requirements of the limited maintenance plan option.

Ecology's Thurston County limited maintenance plan submittal includes an emissions inventory based on Ecology's 2005 Triennial Emissions Inventory and the 2008 National Emissions Inventory. These base years represent the most recent emissions inventory data available and are consistent with the data used to determine applicability of the limited maintenance plan option (i.e., having no violations of the $PM_{10}$ NAAQS). The emissions inventory focused on four significant source categories chosen based on a review of the original maintenance plan. These source categories, in order of relative impact, are wood burning, construction dust, road dust, and vehicle exhaust and tire wear. Since the Thurston County area is primarily residential and governmental, other source categories, including industrial sources, are insignificant. This data supports Ecology's conclusion that the control measures contained in the original attainment plan will continue to protect and maintain the $PM_{10}$ NAAQS.

*C. Does the limited maintenance plan include an assurance of continued operation of an appropriate EPA-Approved air quality monitoring network, in accordance with 40 CFR Part 58?*

$PM_{10}$ monitoring was established in the Thurston County area in 1985, with many changes to the monitoring technology and requirements since. Beginning in 1990, Ecology and ORCAA collocated a nephelometer with the existing $PM_{10}$ FRM monitor. A nephelometer is an instrument that is widely used to calculate particulate matter concentrations based on light scatter measurements. While not an EPA-approved FRM monitoring method, Ecology and ORCAA found that the nephelometer and the $PM_{10}$ FRM monitor were highly correlated. Because of this high level of correlation between the monitors, as part of the 2007 annual network monitoring report under 40 CFR part 58, Ecology requested replacing the FRM monitor with the nephelometer so that resources could be redirected to more pressing environmental issues such as ensuring that areas of concern in the State were in compliance with the recently revised fine particulate matter ($PM_{2.5}$) NAAQS, which is defined as particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers. The EPA approved this request on November 16, 2007. A full description of the correlation data is included in the limited maintenance plan submittal. The EPA is proposing to approve this monitoring system modification, using nephelometer data to represent $PM_{10}$ concentrations, under 40 CFR 58.14(c) for the second 10-year maintenance plan period because this modification is a reproducible approach to representing air quality in the Thurston County maintenance area, and the area continues to meet all applicable Appendix D requirements evaluated as part of the annual network approval process. As detailed in the limited maintenance plan, ORCAA will calculate the $PM_{10}$ design value estimate annually from nephelometer data through 2020 to confirm the area continues to meet the $PM_{10}$ NAAQS. ORCAA also makes a commitment to continue operation of a nephelometer in the Thurston County maintenance area through the 2020, the end of the maintenance period, to determine $PM_{10}$ levels. In the unlikely event that after exceptional events are discounted, the second highest $PM_{10}$ concentration in a calendar year based on nephelometer monitoring exceeds the LMP threshold of 98 $\mu g/m^3$, Ecology, ORCAA, and EPA will discuss reestablishment of FRM monitoring as part of the annual network monitoring report process.

*D. Does the plan meet the Clean Air Act requirements for contingency provisions?*

Clean Air Act section 175A states that a maintenance plan must include contingency provisions, as necessary, to ensure prompt correction of any violation of the NAAQS which may occur after redesignation of the area to attainment. The EPA is proposing approval of ORCAA Rule 8.1.4(e) into the SIP. This regulation was passed in conjunction with the 1997 maintenance plan submission and prohibits the use of uncertified woodstoves in the Thurston County maintenance area for the sole purpose of meeting Clean Air Act requirements for contingency measures. The EPA reviewed ORCAA Rule 8.1.4(e) and determined that it meets the contingency measure requirements. The contingency measure will be triggered if a violation of the $PM_{10}$ standard occurs at the Thurston County maintenance area monitor based on nephelometer and/or FRM monitoring. A violation of the $PM_{10}$ standard will be determined by the procedures outlined in 40 CFR Part 50, Appendix K—Interpretation of the NAAQS for Particulate Matter.

*E. Has the State met conformity requirements?*

(1) Transportation Conformity

Under the limited maintenance plan option, emissions budgets are treated as essentially not constraining for the maintenance period because it is unreasonable to expect that qualifying areas would experience so much growth in that period that a NAAQS violation would result. While areas with maintenance plans approved under the limited maintenance plan option are not subject to the budget test, the areas remain subject to the other transportation conformity requirements of 40 CFR part 93, subpart A. Thus, the metropolitan planning organization (MPO) in the area or the State must document and ensure that:

(a) Transportation plans and projects provide for timely implementation of SIP transportation control measures (TCMs) in accordance with 40 CFR 93.113;

(b) Transportation plans and projects comply with the fiscal constraint element as set forth in 40 CFR 93.108;

(c) The MPO's interagency consultation procedures meet the applicable requirements of 40 CFR 93.105;

(d) Conformity of transportation plans is determined no less frequently than every three years, and conformity of plan amendments and transportation projects is demonstrated in accordance with the timing requirements specified in 40 CFR 93.104;

(e) The latest planning assumptions and emissions model are used as set forth in 40 CFR 93.110 and 40 CFR 93.111;

(f) Projects do not cause or contribute to any new localized carbon monoxide or particulate matter violations, in accordance with procedures specified in 40 CFR 93.123; and

(g) Project sponsors and/or operators provide written commitments as specified in 40 CFR 93.125.

Upon approval of the Thurston County limited maintenance plan, the area is exempt from performing a regional emissions analysis, but must meet project-level conformity analyses as well as the transportation conformity criteria mentioned above.

(2) General Conformity

For Federal actions required to address the specific requirements of the general conformity rule, one set of requirements applies particularly to ensuring that emissions from the action will not cause or contribute to new violations of the NAAQS, exacerbate current violations, or delay timely attainment. One way that this requirement can be met is to demonstrate that ''the total of direct and indirect emissions from the action (or portion thereof) is determined and documented by the state agency primarily responsible for the applicable SIP to result in a level of emissions which, together with all other emissions in the nonattainment area, would not exceed the emissions budgets specified in the applicable SIP'' (40 CFR 93.158(a)(5)(i)(A)).

The decision about whether to include specific allocations of allowable emissions increases to sources is one made by the state air quality agencies. These emissions budgets are different than those used in transportation conformity. Emissions budgets in transportation conformity are required to limit and restrain emissions. Emissions budgets in general conformity allow increases in emissions up to specified levels. The State has not chosen to include specific emissions allocations for Federal projects that would be subject to the provisions of general conformity.

## VI. Revisions to the Washington SIP

As previously discussed, the EPA approved the wood smoke control measures contained in Chapter 173–433 WAC *Solid Fuel Burning Device Standards* on January 15, 1993, based on state regulatory provisions in effect as of October 18, 1990 (58 FR 4578). Ecology subsequently revised Chapter 173–433 WAC to strengthen the control measures with changes such as adding one of the nation's most stringent state woodstove certification standards and by moving towards a two-stage burn ban system to encourage adoption of the cleaner burning woodstoves. These changes to Chapter 173–433 WAC were effective on April 20, 1991 and March 6, 1993, but were not submitted for adoption into the SIP at that time. A redline strikeout copy of the regulatory changes along with the EPA's analysis is included in the docket for this action. Based on our review, the EPA is proposing to approve Ecology's 1991 and 1993 regulatory updates. In addition, Ecology requested that the EPA remove from the approved SIP Chapter 173–433–170 WAC *Retail Sales Fee* (state effective January 3, 1989) because this provision is not a control measure or a required element of the SIP. After reviewing the original Thurston County attainment plan, the EPA agrees that this provision was not a control measure relied upon for attainment and removal of Chapter 173–433–170 from the SIP will not interfere with continued attainment or maintenance of the NAAQS. Similarly, the EPA erred in including Chapter 173–433–200 WAC *Regulatory Actions and Penalties* in the SIP incorporated by reference in 40 CFR 52.2470. The EPA reviews and approves state submissions to ensure they provide adequate enforcement authority. However, regulations describing agency enforcement authority are not incorporated into the SIP to avoid potential conflict with the EPA's independent authorities. Therefore, we will remove Chapter 173–433–200 WAC from 40 CFR 52.2470.

While the provisions of Chapter 173–433 WAC *Solid Fuel Burning Device Standards* apply statewide per Chapter 173–433–020 WAC, Ecology requested that the EPA approve portions of ORCAA Rule 8.1 *Wood Heating* and ORCAA Rule 6.2 *Outdoor Burning* because ORCAA has direct implementation authority in Thurston County. The EPA reviewed these regulations to ensure they are as stringent as the existing control measures, with a full copy of the EPA's analysis included in the docket for this action. It is important to note that the ORCAA control measures, particularly burn ban trigger levels, focus on the more stringent and environmentally relevant 24-hour $PM_{2.5}$ NAAQS. Ecology and ORCAA provided an analysis of $PM_{10}$ and $PM_{2.5}$ data collected by collocated FRM monitors at the Thurston County monitoring site. ORCAA found that the two pollutants were correlated and one could be determined from the other with a high degree of accuracy within the range of observations. The 24-hour $PM_{2.5}$ NAAQS revised in 2006 has a protection level of 35 $\mu g/m^3$ compared to the 1987 $PM_{10}$ 24-hour NAAQS of 150 $\mu g/m^3$. Based on the monitoring data from Thurston County, ORCAA found that in the critical winter season the majority of $PM_{10}$ is $PM_{2.5}$. The statistical relationship between the two PM parameters indicates $PM_{2.5}$ levels would need to exceed 139 $\mu g/m^3$ before the $PM_{10}$ NAAQS is exceeded. The EPA concurs that Thurston County would violate the 24-hour $PM_{2.5}$ NAAQS well before it exceeded the $PM_{10}$ NAAQS. By setting burn ban trigger levels to protect the 35 $\mu g/m^3$ 24-hour $PM_{2.5}$ NAAQS, ORCAA is simultaneously protecting the 150 $\mu g/m^3$ 24-hour $PM_{10}$ NAAQS. Finally, ORCAA Rule 8.1.4(e) provides a local clean air agency rule for implementing the contingency measure which would prohibit the use of uncertified wood stoves. The EPA reviewed the ORCAA regulations and determined that they strengthen the SIP and meet the CAA requirements. As discussed above with respect to enforcement authorities, the EPA reviewed and proposes approval of ORCAA Rule 8.1.6 *Penalties* but will not incorporate this provision by reference in 40 CFR 52.2470.

TABLE 1—SUBMITTED RULES

| Agency | Citation | Title | State or local effective date | Submitted |
|---|---|---|---|---|
| Ecology | 173–433–030 | Definitions | 04/20/91 | 07/01/13 |

TABLE 1—SUBMITTED RULES—Continued

| Agency | Citation | Title | State or local effective date | Submitted |
|---|---|---|---|---|
| Ecology | 173–433–100 | Emission performance standards | 03/06/93 | 07/01/13 |
| Ecology | 173–433–110 | Opacity standards | 03/06/93 | 07/01/13 |
| Ecology | 173–433–120 | Prohibited fuel types | 04/20/91 | 07/01/13 |
| Ecology | 173–433–140 | Impaired air quality criteria | 04/20/91 | 07/01/13 |
| Ecology | 173–433–150 | Curtailment | 04/20/91 | 07/01/13 |
| ORCAA | 6.2.3 (only as it applies to the cities of Olympia, Lacey, and Tumwater). | No residential or land clearing burning | 02/04/12 | 07/01/13 |
| ORCAA | 6.2.6 | Curtailment | 03/18/11 | 07/01/13 |
| ORCAA | 6.2.7 | Recreational Burning | 03/18/11 | 07/01/13 |
| ORCAA | 8.1.1 | Definitions | 05/22/10 | 07/01/13 |
| ORCAA | 8.1.2 (b) and (c) | General emission standards | 05/22/10 | 07/01/13 |
| ORCAA | 8.1.3 | Prohibited fuel types | 05/22/10 | 07/01/13 |
| ORCAA | 8.1.4 | Curtailment | 05/22/10 | 07/01/13 |
| ORCAA | 8.1.5 | Exceptions | 05/22/10 | 07/01/13 |
| ORCAA | 8.1.6 | Penalties | 05/22/10 | 07/01/13 |
| ORCAA | 8.1.7 | Sale and installation of uncertified woodstoves. | 05/22/10 | 07/01/13 |
| ORCAA | 8.1.8 | Disposal of uncertified woodstoves | 05/22/10 | 07/01/13 |

## VII. Proposed Action

The EPA is proposing to approve the second 10-year limited maintenance plan for Thurston County submitted by Washington State. The state's submittal also included a request to approve state regulatory updates to the original control measures included in Chapter 173–433 WAC as well as corresponding local ORCAA regulations. The EPA is proposing to approve these regulatory changes as well as corrections to the EPA's January 1993 approval because these changes strengthen the SIP.

## VIII. Statutory and Executive Order Reviews

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

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

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because it will not impose substantial direct costs on tribal governments or preempt tribal law. The SIP is not approved to apply in Indian country located in the State, except for non-trust land within the exterior boundaries of the Puyallup Indian Reservation, also known as the 1873 Survey Area. Under the *Puyallup Tribe of Indians Settlement Act of 1989,* 25 U.S.C. 1773, Congress explicitly provided state and local agencies in Washington authority over activities on non-trust lands within the 1873 Survey Area and the EPA is therefore approving this SIP on such lands.

### List of Subjects in 40 CFR Part 52

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

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

Dated: July 22, 2013.

**Dennis J. McLerran,**

*Regional Administrator, Region 10.*

[FR Doc. 2013–18843 Filed 8–2–13; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R03–OAR–2013–0510; FRL–9841–9]**

## Approval and Promulgation of Air Quality Implementation Plans; Virginia; Section 110(a)(2) Infrastructure Requirements for the 2010 Nitrogen Dioxide National Ambient Air Quality Standards

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia pursuant to the Clean Air Act (CAA). Whenever new or revised National Ambient Air Quality Standards (NAAQS) are promulgated, the CAA requires states to submit a plan

for the implementation, maintenance, and enforcement of such NAAQS. The plan is required to address basic program elements, including, but not limited to regulatory structure, monitoring, modeling, legal authority, and adequate resources necessary to assure attainment and maintenance of the standards. These elements are referred to as infrastructure requirements. The Commonwealth of Virginia has made a submittal addressing the infrastructure requirements for the 2010 nitrogen dioxide ($NO_2$) NAAQS.

**DATES:** Written comments must be received on or before September 4, 2013.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA–R03–OAR–2013–0510 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *Email: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2013–0510, Cristina Fernandez, Associate Director, Office of Air Program Planning, Air Protection Division, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–R03–OAR–2013–0510. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

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

**SUPPLEMENTARY INFORMATION:** On May 30, 2013, the Virginia Department of Environmental Quality (VADEQ) submitted a revision to its SIP to satisfy the requirements of section 110(a)(2) of the CAA for the 2010 $NO_2$ NAAQS.

## I. Background

EPA first set standards for $NO_2$ in 1971, setting both a primary standard (to protect health) and a secondary standard (to protect the public welfare) at 53 parts per billion (53 ppb), averaged annually. EPA has reviewed the standards twice since that time, but chose not to revise the annual standards at the conclusion of each review. On February 9, 2010, EPA established an additional primary $NO_2$ standard at 100 ppb, averaged over one hour.

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS. Specifically, 110(a)(1) requires states to submit SIPs meeting the applicable requirements of section 110(a)(2) within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe, and section 110(a)(2) requires states to address specific elements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the newly established or revised NAAQS.

The contents of a submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains. States were required to submit such SIPs for the 2010 $NO_2$ NAAQS to EPA no later than January 2013.

## II. Summary of SIP Revision

On May 30, 2013, VADEQ provided a SIP revision to satisfy the requirements of section 110(a)(2) of the CAA for the 2010 $NO_2$ NAAQS. This revision addresses the following infrastructure elements, which EPA is proposing to approve: Sections 110(a)(2)(A), (B), (C) (for enforcement and regulation of minor sources and minor modifications), (D)(i)(II) (for visibility protection), (D)(ii), (E)(i), (E)(iii), (F), (G), (H), (J), (K), (L), and (M), or portions thereof. EPA is taking separate action on the portions of section 110(a)(2)(C), (D)(i)(II), and (J) as they relate to Virginia's prevention of significant deterioration (PSD) program and on section 110(a)(2)(E)(ii) as it relates to section 128 (State Boards). This action does not include any proposed action on section 110(a)(2)(I) of the CAA which pertains to the nonattainment requirements of part D, Title I of the CAA, because this element is not required to be submitted by the 3-year submission deadline of CAA section 110(a)(1), and will be addressed in a separate process.

Also, in accordance with the *EME Homer City* decision from the United States Court of Appeals for the District of Columbia Circuit, a state is not required to submit a SIP pursuant to section 110(a) which addresses section 110(a)(2)(D)(i)(I) until EPA has defined a state's contribution to nonattainment or interference with maintenance in another state. *See EME Homer City Generation, LP* v. *EPA,* 696 F.3d 7 (DC Cir. 2012), *cert. granted,* 2013 U.S. LEXIS 4801 (2013). Unless the *EME Homer City* decision is reversed or otherwise modified by the Supreme Court, states such as Virginia are not required to submit section 110(a)(2)(D)(i)(I) SIPs until the EPA has quantified their obligations under that section. Virginia's May 30, 2013 infrastructure SIP submission for the

2010 $NO_2$ NAAQS does not include a component to address section 110(a)(2)(D)(i)(I). Therefore, in this action, EPA is not proposing to act on the section 110(a)(2)(D)(i)(I) portion of Virginia's May 30, 2013 SIP submission for the 2010 $NO_2$ NAAQS. A detailed summary of EPA's review and rationale for approving Virginia's submittal may be found in the Technical Support Document (TSD) for this proposed rulemaking action, which is available online at *www.regulations.gov*, Docket number EPA–R03–OAR–2013–0510.

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

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

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

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

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

## IV. Proposed Action

EPA is proposing to approve the following infrastructure elements or portions thereof of Virginia's May 30, 2013 SIP revision: Section 110(a)(2)(A), (B), (C) (for enforcement and regulation of minor sources and minor modifications), (D)(i)(II) (for visibility protection), (D)(ii), (E)(i), (E)(iii), (F), (G), (H), (J) (relating to consultation, public notification, and visibility protection requirements), (K), (L), and (M). Virginia's SIP revision provides the basic program elements specified in section 110(a)(2) necessary to implement, maintain, and enforce the 2010 $NO_2$ NAAQS. This action does not include any proposed action on section 110(a)(2)(I) of the CAA which pertains to the nonattainment requirements of part D, Title I of the CAA, since this element is not required to be submitted by the 3-year submission deadline of CAA section 110(a)(1), and will be addressed in a separate process. EPA is not taking proposed action on section 110(a)(2)(D)(i)(I) of the CAA, because this element, or portions thereof, is not presently required to be submitted by a state until the EPA has quantified a state's obligations under that section. EPA is taking separate action on the portions of (C), (D)(i)(II), and (J) as they relate to Virginia's PSD program, and on (E)(ii) as it relates to section 128 (State Boards). EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

## V. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

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

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

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

In addition, this proposed rule, which satisfies certain infrastructure requirements of section 110(a)(2) of the CAA for the 2010 $NO_2$ NAAQS for the Commonwealth of Virginia, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

**List of Subjects in 40 CFR Part 52**

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

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

Dated: July 19, 2013.

**Shawn M. Garvin,**

*Regional Administrator, Region III.*

[FR Doc. 2013–18705 Filed 8–2–13; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 300

**[EPA–HQ–SFUND–2000–0003; FRL–9842–8]**

### National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the Imperial Refining Company Superfund Site

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule; notice of intent.

**SUMMARY:** The Environmental Protection Agency (EPA) Region 6 is issuing a Notice of Intent to Delete the Imperial Refining Co. Superfund Site (Site) located in Ardmore, Oklahoma, from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Oklahoma, through the Oklahoma Department of Environmental Quality, have determined that all appropriate response actions under CERCLA, other than operation, maintenance, and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

**DATES:** Comments must be received by September 4, 2013.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–SFUND–2000–0003, by one of the following methods:

• *http://www.regulations.gov.* Follow on-line instructions for submitting comments.

• *Email: mueller.brian@epa.gov.*

• *Fax:* 214–665–6660.

• *Mail:* Brian W. Mueller; U.S. Environmental Protection Agency, Region 6; Superfund Division (6SF–RA); 1445 Ross Avenue, Suite 1200; Dallas, Texas 75202–7167.

• *Hand delivery:* U.S. Environmental Protection Agency, Region 6; 1445 Ross Avenue, Suite 700; Dallas, Texas 75202–2733; Contact: Brian W. Mueller (214) 665–7167. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–HQ–SFUND–2000–0003. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the *http://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 statue. Certain other material, such as copyrighted material, will be publicly available only in the hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at:

U.S. Environmental Protection Agency, Region 6; 1445 Ross Avenue, Suite 700; Dallas, Texas 75202–2733. *Hours of operation:* Monday through Friday, 9:00 a.m. to 12:00 p.m. and 1:00 p.m. to 4:00 p.m. *Contact:* Brian W. Mueller (214) 665–7167.

Ardmore Public Library; 320 E Street NW.; Ardmore, Oklahoma 73401. *Hours of Operation:* Monday through Thursday 10:00 a.m. until 8:30 p.m.; Friday through Saturday, 10:00 a.m. until 4:00 p.m.; Sunday 1:00 p.m. until 5:00 p.m.

Oklahoma Department of Environmental Quality; 707 N Robinson, 2nd floor, Oklahoma City, Oklahoma 73102. *Hours of operation:* Monday through Friday 8:00 a.m. until 4:30 p.m.

**FOR FURTHER INFORMATION CONTACT:** Brian W. Mueller, Remedial Project Manager; U.S. Environmental Protection Agency, Region 6; Superfund Division (6SF–R); 1445 Ross Avenue, Suite 1200; Dallas, Texas 75202–2733, (214) 665–7167, email: *mueller.brian@epa.gov.*

**SUPPLEMENTARY INFORMATION:** In the ''Rules and Regulations'' Section of today's **Federal Register**, we are publishing a direct final Notice of Deletion of Imperial Refining Co. Superfund Site without prior Notice of Intent to Delete because we view this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this deletion in the preamble to the direct final Notice of Deletion, and those reasons are incorporated herein. If we receive no adverse comment(s) on this deletion action, we will not take further action on this Notice of Intent to Delete.

If we receive adverse comment(s), we will withdraw the direct final Notice of Deletion, and it will not take effect. We will, as appropriate, address all public comments in a subsequent final Notice of Deletion based on this Notice of Intent to Delete. We will not institute a second comment period on this Notice of Intent to Delete. Any parties interested in commenting must do so at this time.

For additional information, see the direct final Notice of Deletion which is located in the *Rules* section of this **Federal Register**.

**List of Subjects in 40 CFR Part 300**

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Dated: July 25, 2013.

**Ron Curry,**

*Regional Administrator, Region 6.*

[FR Doc. 2013–18855 Filed 8–2–13; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

**[Docket No. FWS–R2–ES–2013–0098; FXES11130900000C2–134–FF09E32000]**

**RIN 1018–AY46**

## Endangered and Threatened Wildlife and Plants; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Revision to the Nonessential Experimental Population of the Mexican Wolf (Canis lupus baileyi)

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; notice of intent to prepare an environmental impact statement.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, will prepare a draft environmental impact statement pursuant to the National Environmental Policy Act of 1969, as amended, in conjunction with a proposed rule to revise the existing nonessential experimental population designation of the Mexican wolf *(Canis lupus baileyi)* under section 10(j) of the Endangered Species Act of 1973, as amended.

**DATES:** We will accept comments received or postmarked on or before September 19, 2013. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**) must be received by 11:59 p.m. Eastern Time on the closing date.

**ADDRESSES:** 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–R2–ES–2013–0098, which is the docket number for this notice. You may submit a comment by clicking on ''Comment Now!''

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R2–ES–2013–0098; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Information Requested section below for more information). To increase our efficiency in downloading comments, groups providing mass submissions should submit their comments in an Excel file.

**FOR FURTHER INFORMATION CONTACT:** Mexican Wolf Recovery Program, U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna Road, NE., Albuquerque, NM 87113 or by telephone 505–761–4704. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339. Additional information can be viewed on the Mexican Gray Wolf Recovery Program's Web site at *http://www.fws.gov/southwest/es/mexicanwolf/index.cfm.*

**SUPPLEMENTARY INFORMATION:**

### Previous Federal Actions

We established a nonessential experimental population of Mexican wolves in 1998 (63 FR 1752, January 12, 1998) pursuant to section 10(j) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

On August 7, 2007, we published a notice of intent in the **Federal Register** (72 FR 44065) to initiate the planning process for preparation of an environmental impact statement (EIS), pursuant to the National Environmental Policy Act (NEPA 42 U.S.C. 4321 *et seq.*), to modify our Mexican wolf nonessential experimental population designation (63 FR 1752, January 12, 1998). We held 12 public informational sessions in the communities and on the dates listed in our scoping report, which is available at *http://www.fws.gov/southwest/es/mexicanwolf/documents.cfm* and at *http://www.regulations.gov* at Docket No. FWS–R2–ES–2013–0098.

On June 13, 2013, we published a proposed rule to revise our existing Mexican wolf nonessential experimental population designation (78 FR 35719).

### Background

The proposed rule (78 FR 35719, June 12, 2013), together with the proposed implementation of a soon-to-be-released management plan for Mexican wolves in areas of Arizona and New Mexico that are outside of the experimental population area, form the basis of the proposed action of our EIS. The EIS will consider reasonable alternatives for revisions to the geographic boundaries and management regulations of the current Mexican wolf nonessential experimental population (63 FR 1752, January 12, 1998), and the implementation of a management plan for the Mexican wolf in those portions of Arizona and New Mexico external to the Mexican Wolf Experimental Population Area (MWEPA). The EIS will analyze the environmental consequences of a range of alternatives to the proposed action that include: revisions to the geographic boundaries of the MWEPA and Blue Range Wolf Recovery Area (BRWRA), modifications to the regulations for management of the nonessential experimental population of Mexican wolves, and implementation of a management plan for Mexican wolves in areas of Arizona and New Mexico external to the MWEPA.

The Service will act as the Lead Federal Agency responsible for completion of the EIS (40 CFR 1508.16). We are requesting those Federal and State agencies, local governments, and Tribes that may have jurisdiction by law or special expertise to serve as cooperating agencies in the development of the EIS (40 CFR 1501.6 and 1508.5, 1508.15, 1508.26).

We are continuing the scoping process for this EIS that we began in 2007. We will use the comments received during the 2007 public scoping, as well as comments received during this scoping period, in the preparation of our draft EIS.

### Information Requested

We are currently seeking comments or suggestions from the public,

governmental agencies, Tribes, the scientific community, industry, or any other interested parties concerning the scope of the EIS, pertinent issues we should address, and alternatives that should be analyzed. Specifically, we are interested in comments on the preliminary draft EIS statement of our purpose and need, our proposed action and alternatives, and the alternatives that we have considered but are not bringing forward for further analysis in a draft EIS. To guide public input, we are making available a factsheet as well as preliminary chapters 1 and 2 of a draft EIS for the proposed revision of the nonessential experimental population of the Mexican wolf and implementation of a management plan.

Please note that submissions merely stating support for or opposition to the proposed action and alternatives under consideration, without providing supporting information, although noted, will not be considered in making a determination. Please consider the following when preparing your comments:

- Be as succinct as possible.
- Organize comments beginning with general comments and then move on to specific document sections including page and line numbers in your comment.
- Be specific. Comments supported by logic, rationale, and citations are more useful than opinions.
- State suggestions and recommendations clearly with an expectation of what you would like the Service to do.
- If you comment specifically on the proposed action and alternatives, please tell us what you believe the trade-offs and differences are between alternatives.
- If you propose an additional alternative for consideration, please provide supporting rationale and why you believe it to be a reasonable alternative that would meet the purpose and need for our proposed action.
- If you provide alternate interpretations of science, please support your analysis with appropriate citations.
- If possible, coordinate your comments with other like-minded individuals and organizations. This can strengthen the comment and help us understand the depth of concern.

We have developed several possible alternatives to improve progress toward our reintroduction objective to establish a viable, self-sustaining experimental population of Mexican wolves in the MWEPA and to more effectively manage Mexican wolves throughout Arizona and New Mexico. We do not yet know what the preferred alternative or environmentally preferred alternative may be in the EIS, and we recognize that there may be other reasonable alternatives that we should consider. Therefore, we are seeking comments and suggestions on a number of issues for consideration in preparation of the draft EIS including but not limited to:

- Geographic boundary changes that: Remove the designation of a White Sands Wolf Recovery Area (WSWRA); expand the geographic boundaries of the BRWRA; modify the geographic boundaries of the MWEPA by removing a portion of the MWEPA that occurs in Texas; extend the southern boundary of the MWEPA in Arizona and New Mexico to create an expanded MWEPA; and eliminate the designation of a Primary Recovery Zone (PRZ) and Secondary Recovery Zone (SRZ) within the BRWRA.
- Management changes that: Provide for the initial release of captive-raised Mexican wolves throughout the expanded BRWRA; allow the natural dispersal of wolves from the BRWRA into the MWEPA; provide for the translocation of wolves within the MWEPA pursuant to an authorized management purpose; and modify the provisions for the take of wolves within the MWEPA.
- Development and implementation of management actions on private land within the MWEPA by the Service or an authorized agency to benefit Mexican wolf recovery in voluntary cooperation with private landowners, including but not limited to, initial release and translocation of wolves if requested by the landowner.
- Development and implementation of management actions on tribal land within the MWEPA by the Service or an authorized agency in voluntary cooperation with tribal governments including but not limited to initial release, translocation, capture, and removal of Mexican wolves if requested by the tribal government.
- Implementation of a Mexican Wolf Management Plan for those portions of Arizona and New Mexico not included as part of the MWEPA.

The alternatives we develop will be analyzed pursuant to NEPA in our draft EIS. We will give separate notice of the availability of the draft EIS for public comment when it is completed. We will hold public hearings and informational sessions so that interested and affected people may comment on the draft EIS and provide input into the final decision.

You may submit your comments and materials by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy 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. We will post all hardcopy submissions on *http://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we use in preparing the draft EIS, will be available for public inspection on *http://www.regulations.gov,* at Docket No. FWS–R2–ES–2013–0098, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

**References and Availability of Documents for Review**

We have developed a Web page for NEPA planning on our Southwest Region Ecological Services Mexican Wolf Recovery Program Web site. In cooperation with the U.S. Department of Agriculture, Forest Service, Southwest Region, we have also established information repositories at the Supervisor Offices for the National Forests throughout the project study area. To access the documents we are making available for review, please visit our Web site: *http://www.fws.gov/southwest/es/mexicanwolf/NEPA.cfm* or *http://www.regulations.gov* at Docket No. FWS–R2–ES–2013–0098, or visit the following locations:

Carson National Forest, 208 Cruz Alta Road, Taos, NM 87571.

Cibola National Forest, 2113 Osuna Rd. NE., Albuquerque, NM 87113.

Gila National Forest, 3005 E. Camino del Bosque, Silver City, NM 88061–7863.

Lincoln National Forest, 3463 Los Palomas Blvd., Alamogordo, NM 88310.

Santa Fe National Forest, 11 Forest Lane, Santa Fe, NM 87508.

Apache-Sitgreaves National Forests, 30 South Chiricahua Street, P.O. Box 640, Springerville, AZ 85938.

Coconino National Forest, 1824 S. Thompson Street, Flagstaff, AZ 86001.

Coronado National Forest, Federal Building, 300 West Congress, Tucson, AZ 85701.

Kaibab National Forest, 800 S. 6th Street, Williams, AZ 86046.

## Authors

The primary authors of this notice are the staff members of the Mexican Wolf Recovery Program, U.S Fish and Wildlife Service, Southwest Region (see **FOR FURTHER INFORMATION CONTACT**).

## Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

Dated: July 25, 2013.

**Rachel Jacobson,**

*Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 2013–18823 Filed 8–2–13; 8:45 am]

**BILLING CODE 4310–55–P**

# Notices

Federal Register

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Monday, August 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

### Draft Environmental Assessment for the Kika de la Garza Subtropical Agricultural Research Center Land Transfer

**AGENCY:** Agricultural Research Service, USDA.

**ACTION:** Notice of the Draft Environmental Assessment for the Kika de la Garza Subtropical Agricultural Research Center Land Transfer.

**SUMMARY:** In accordance with the National Environmental Policy Act (NEPA) of 1969, as amended, and the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, the United States Department of Agriculture (USDA) has prepared a Draft Environmental Assessment (EA) for the proposed transfer of approximately 70 acres of land and associated buildings at the Kika de la Garza Subtropical Agricultural Research Center (KSARC) from the USDA Agricultural Research Service (ARS) in Weslaco, Texas, to The Texas A&M University System (TAMUS). The KSARC is divided into two separate properties, with the main research station located at 2413 East Highway 83, Weslaco, Texas 77840 and a research farm located at 2301 South International Boulevard, Weslaco, Texas 77840. This notice is announcing the opening of a 30-day public comment period.

**DATES:** Comments must be received on or before August 30, 2013.

**ADDRESSES:** You may submit comments related to the proposed KSARC Land Transfer by any of the following methods: Email: *phil.smith@ars.usda.gov,* Fax: 979–260–9344. Mail: USDA–ARS–WBSC, 1001 Holleman Drive East, College Station, Texas 77840. Copies of the Draft EA for the KSARC Land Transfer are available for public inspection during normal business hours at the following locations:

- Weslaco Public Library, 525 South Kansas Avenue, Weslaco, Texas 78596
- Larry Ringer Library, 1818 Harvey Mitchell Parkway South, College Station, Texas 77845

**FOR FURTHER INFORMATION CONTACT:** Phil Smith, Acting Property Team Lead, USDA–ARS–WBSC, 1001 Holleman Drive East, College Station, Texas, 77840; 979–260–9449.

**SUPPLEMENTARY INFORMATION:** The USDA is proposing to transfer approximately 70 acres of land and facilities at the KSARC from USDA–ARS in Weslaco, Texas, to TAMUS. As a condition of the transfer, TAMUS would commit to using the property for agricultural and natural resources research for a period of 25 years, supporting the strategic goals of USDA and establishing a Beginning Farmers and Ranchers Program at the Property. TAMUS would assume responsibility and maintenance of the constructed facilities and land to be conveyed from USDA. The KSARC has been in operation as a USDA–ARS research facility since 1960, with the mission ''to increase food and fiber productivity by developing new technology for safe and efficient agricultural production methods and by conserving natural resources and protecting the environment.'' The facility was closed under Public Law (Pub. L.) 112–55, Consolidated and Further Continuing Appropriations Act, 2012 and is currently being utilized in a very limited capacity by researchers from other ARS locations. Under the terms of the Public Law, the Secretary of Agriculture will decide whether to formally transfer the Property from USDA to TAMUS or have USDA retain possession of the Property. If the decision is made to transfer the Property, it will be done with no monetary cost to TAMUS and a Deed Without Warranty will be prepared by the USDA to convey the title/property rights to TAMUS. The Deed Without Warranty would incorporate any use restrictions identified by the NEPA process, as well as the 25-year use restriction for agricultural and natural resources research as required by Section 732 of the Public Law. Two alternatives are analyzed in the Draft EA, the No Action Alternative and the Proposed Action. The draft EA addresses potential impacts of these alternatives on the natural and human environment.

- Alternative 1—No Action. The USDA would retain possession of the approximate 70 acres of land and facilities at the KSARC. The USDA would no longer operate and/or maintain approximately 85–90% of the property and it would likely fall into a state of disrepair. The USDA will continue ongoing research funded by other Locations on the remaining 10–15% of the property.
- Alternative 2—Proposed Action. The USDA would formally transfer approximately 70 acres of land at the KSARC to TAMUS. As a condition of the transfer, TAMUS would commit to using the Property for agricultural and natural resources research for a period of 25 years, supporting the strategic goals of USDA and establishing a Beginning Farmers and Ranchers Program at the Property. TAMUS would assume responsibility and maintenance of the constructed facilities and land to be conveyed from USDA.

In addition, one alternative was considered in the Draft EA but eliminated from detailed study. In this alternative, USDA would retain possession of the land and it would be transferred to the General Services Administration for disposal. Since it cannot reasonably be determined who would ultimately take possession of the property and how it would be utilized, it was not analyzed in detail in the EA. The USDA will use and coordinate the NEPA commenting process to satisfy the public involvement process for Section 106 of the National Historic Preservation Act (16 U.S.C. 470(f) as provided for in 36 CFR 800.2(d)(3)). Following the public comment period, comments will be used to prepare the Final EA. The USDA will respond to each substantive comment by making appropriate revisions to the document or by explaining why a comment did not warrant a change. A Notice of Availability of the Final EA will be published in the **Federal Register**. All comments, including any personal identifying information included in the comment will become a matter of public record. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: July 23, 2013.

**Edward B. Knipling,**

*Administrator, Agricultural Research Service.*

[FR Doc. 2013–18845 Filed 8–2–13; 8:45 am]

**BILLING CODE 3410–03–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Research Service

### Notice of Intent to Grant Exclusive License

**AGENCY:** Agricultural Research Service, USDA.

**ACTION:** Notice of intent.

**SUMMARY:** Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Central Washington Grain Growers, Inc. of Waterville, Washington, an exclusive license to the pea variety named ''Lynx''.

**DATES:** Comments must be received on or before September 4, 2013.

ADDRESS: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1174, Beltsville, Maryland 20705–5131.

**FOR FURTHER INFORMATION CONTACT:** June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

**SUPPLEMENTARY INFORMATION:** The Federal Government's rights in this plant variety are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this plant variety as Central Washington Grain Growers, Inc. of Waterville, Washington has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

**Robert Griesbach,**

*Deputy Assistant Administrator.*

[FR Doc. 2013–18847 Filed 8–2–13; 8:45 am]

**BILLING CODE 3410–03–P**

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. APHIS–2012–0020]**

### Monsanto Co.; Availability of Plant Pest Risk Assessment and Environmental Assessment for Determination of Nonregulated Status of Soybean Genetically Engineered for Increased Yield

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** We are advising the public that the Animal and Plant Health Inspection Service is making available for public comment our plant pest risk assessment and our draft environmental assessment regarding a request from the Monsanto Company seeking a determination of nonregulated status of soybean designated as MON 87712, which has been genetically engineered for increased yield. We are soliciting comments on whether this genetically engineered soybean is likely to pose a plant pest risk.

**DATES:** We will consider all comments that we receive on or before September 4, 2013.

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

- Federal eRulemaking Portal: Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2012-0020.*
- Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS–2012–0020, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2012-0020* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

Supporting documents are also available on the APHIS Web site at *http://www.aphis.usda.gov/biotechnology/petitions_table_pending.shtml* under APHIS Petition Number 11–202–01p.

**FOR FURTHER INFORMATION CONTACT:** Dr. Rebecca Stankiewicz Gabel, Chief, Biotechnology Environmental Analysis Branch, Environmental Risk Analysis Programs, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 851–3927, email: *rebecca.l.stankiewicz-gabel@aphis.usda.gov.* To obtain copies of the supporting documents for this petition, contact Ms. Cindy Eck at (301) 851–3892, email: *cynthia.a.eck@aphis.usda.gov.*

**SUPPLEMENTARY INFORMATION:**

#### Background

Under the authority of the plant pest provisions of the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered (GE) organisms and products are considered ''regulated articles.''

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. APHIS has received a petition (APHIS Petition Number 11–202–01p) from the Monsanto Company (Monsanto) of St. Louis, MO, seeking a determination of nonregulated status of soybean (*Glycine max*) designated as event MON 87712, which has been genetically engineered for increased yield. The petition stated that this soybean is unlikely to pose a plant pest risk and, therefore, should not be a regulated article under APHIS' regulations in 7 CFR part 340.

According to our process [1] for soliciting public comment when considering petitions for determinations of nonregulated status of GE organisms, APHIS accepts written comments regarding a petition once APHIS deems it complete. In a notice [2] published in the **Federal Register** on July 13, 2012,

[1] On March 6, 2012, APHIS published in the **Federal Register** (77 FR 13258–13260, Docket No. APHIS–2011–0129) a notice describing our public review process for soliciting public comments and information when considering petitions for determinations of nonregulated status for GE organisms. To view the notice, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0129.*

[2] To view the notice, the petition, and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2012-0020.*

(77 FR 41354–41355, Docket No. APHIS–2012–0020), APHIS announced the availability of the Monsanto petition for public comment. APHIS solicited comments on the petition for 60 days ending on September 11, 2012, in order to help identify potential environmental and interrelated economic issues and impacts that APHIS may determine should be considered in our evaluation of the petition.

APHIS received 66 comments on the petition: Several of these comments included electronic attachments consisting of a consolidated document of many identical or nearly identical letters, for a total of 4,665 comments. Issues raised during the comment period include effects on plant and animal diversity, soybean supply and prices, and organic soy production; gene flow; and food and feed impacts. APHIS has evaluated the issues raised during the comment period and, where appropriate, has provided a discussion of these issues in our environmental assessment (EA).

After public comments are received on a completed petition, APHIS evaluates those comments and then provides a second opportunity for public involvement in our decisionmaking process. According to our public review process (see footnote 1), the second opportunity for public involvement follows one of two approaches, as described below.

If APHIS decides, based on its review of the petition and its evaluation and analysis of comments received during the 60-day public comment period on the petition, that the petition involves a GE organism that raises no substantive new issues, APHIS will follow Approach 1 for public involvement. Under Approach 1, APHIS announces in the **Federal Register** the availability of APHIS' preliminary regulatory determination along with its EA, preliminary finding of no significant impact (FONSI), and its plant pest risk assessment (PPRA) for a 30-day public review period. APHIS will evaluate any information received related to the petition and its supporting documents during the 30-day public review period.

If APHIS decides, based on its review of the petition and its evaluation and analysis of comments received during the 60-day public comment period on the petition, that the petition involves a GE organism that raises substantive new issues, APHIS will follow Approach 2. Under Approach 2, APHIS first solicits written comments from the public on a draft EA and PPRA for a 30-day comment period through the publication of a **Federal Register** notice. Then, after reviewing and evaluating the comments on the draft EA and PPRA and other information, APHIS will revise the PPRA as necessary and prepare a final EA and, based on the final EA, a National Environmental Policy Act (NEPA) decision document (either a FONSI or a notice of intent to prepare an environmental impact statement). For this petition, we are using Approach 2.

APHIS has prepared a PPRA to determine if soybean event MON 87712 is unlikely to pose a plant pest risk. In section 403 of the Plant Protection Act, ''plant pest'' is defined as any living stage of any of the following that can directly or indirectly injure, cause damage to, or cause disease in any plant or plant product: A protozoan, a nonhuman animal, a parasitic plant, a bacterium, a fungus, a virus or viroid, an infectious agent or other pathogen, or any article similar to or allied with any of the foregoing.

APHIS has also prepared a draft EA in which we present two alternatives based on our analysis of data submitted by Monsanto, a review of other scientific data, field tests conducted under APHIS oversight, and comments received on the petition. APHIS is considering the following alternatives: (1) Take no action, i.e., APHIS would not change the regulatory status of soybean event MON 87712 and it would continue to be a regulated article, or (2) make a determination of nonregulated status of soybean event MON 87712.

The EA was prepared in accordance with (1) NEPA, as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

In accordance with our process for soliciting public input when considering petitions for determinations of nonregulated status for GE organisms, we are publishing this notice to inform the public that APHIS will accept written comments on our PPRA and draft EA regarding the petition for a determination of nonregulated status from interested or affected persons for a period of 30 days from the date of this notice. The petition is available for public review, and copies are available as indicated under **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** above.

After the comment period closes, APHIS will review all written comments received during the comment period and any other relevant information. After reviewing and evaluating the comments on the draft EA and PPRA and other information, APHIS will revise the PPRA as necessary and prepare a final EA. Based on the final EA, APHIS will prepare a NEPA decision document (either a FONSI or a notice of intent to prepare an environmental impact statement). If a FONSI is reached, APHIS will furnish a response to the petitioner, either approving or denying the petition. APHIS will also publish a notice in the **Federal Register** announcing the regulatory status of the GE organism and the availability of APHIS' final EA, PPRA, FONSI, and our regulatory determination.

**Authority:** 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 31st day of July 2013.

**Kevin Shea,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2013–18876 Filed 8–2–13; 8:45 am]

BILLING CODE 3410–34–P

## DEPARTMENT OF AGRICULTURE

### Farm Service Agency

### Information Collection; Inventory Property Management

**AGENCY:** Farm Service Agency, USDA.

**ACTION:** Notice; request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Farm Service Agency (FSA) is seeking comments from all interested individuals and organizations on an extension with a revision of a currently approved information collection that supports Inventory Property Management. The information is used to evaluate applicant requests to purchase inventory property, determine eligibility to lease or purchase inventory property, and ensure the payment of the lease amount or purchase amount associated with the acquisition of inventory property. The revision to the information addresses the increase in the total amount of burden hours expected related to inventory property requests. The increase is due to an approximately 13 percent increase in the number of inventory properties being held by FSA since the previous approval request, and thus a higher number of responses. No additional forms, response actions or time increases were added as part of the revision.

**DATES:** We will consider comments that we receive by October 4, 2013.

**ADDRESSES:** We invite you to submit comments on this notice. In your comments, include date, volume, and page number, the OMB control number, and the title of the information collection of this issue of the **Federal Register**. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* J. Lee Nault, Loan Specialist, USDA/FSA/FLP, STOP 0523, 1400 Independence Avenue SW., Washington, DC 20250–0503.

You may also send comments to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Copies of the information collection may be requested by contacting J. Lee Nault at the above address.

**FOR FURTHER INFORMATION CONTACT:** J. Lee Nault, Loan Specialist, Farm Service Agency, (202) 720–6834, or by email: *lee.nault@wdc.usda.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* (7 CFR part 767) Farm Loan Programs—Inventory Property Management.

*OMB Number:* 0560–0234.

*Expiration Date:* 01/31/2014.

*Type of Request:* Extension with a revision.

*Abstract:* FSA's Farm Loan Programs provide supervised credit in the form of loans to family farmers to purchase real estate and equipment and finance agricultural production. Inventory Property Management, as specified in 7 CFR part 767, provides the requirements for the management, lease, and sale of security property acquired by FSA. FSA may take title to real estate as part of dealing with a problem loan either by entering a winning bid in an attempt to protect its interest at a foreclosure sale, or by accepting a deed of conveyance in lieu of foreclosure. Information collections established in the regulation are necessary for FSA to determine an applicant's eligibility to lease or purchase inventory property and to ensure the applicant's ability to make payment on the lease or purchase amount.

The revision to the information collection simply reflects the increase in the total amount of burden hours expected related to inventory property requests. The increase is due to an approximately 13 percent increase in the number of inventory properties being held by FSA since the previous approval request, and thus a higher number of responses. No additional forms, response actions or time increases were added as part of the revision.

*Estimate of Average Time to Respond:* 44 minutes per response. The average travel time, which is included in the total annual burden, is estimated to be 1 hour per respondent.

*Respondents:* Individuals or households, businesses or other for profit farms.

*Estimated Annual Number of Respondents:* 314.

*Estimated Number of Responses per Respondent:* 1.03.

*Total Annual Responses:* 325.

*Estimated Total Annual Burden Hours:* 551.

We are requesting comments on all aspects of this information collection to help us to:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of FSA, including whether the information will have practical utility;

(2) Evaluate the accuracy of FSA's estimate of burden including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected;

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice, including name and addresses when provided, will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed on July 25, 2013.

**Juan M. Garcia,**

*Administrator, Farm Service Agency.*

[FR Doc. 2013–18690 Filed 8–2–13; 8:45 am]

**BILLING CODE 3410–05–P**

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### National School Lunch, Special Milk, and School Breakfast Programs, National Average Payments/Maximum Reimbursement Rates

*Correction*

In notice document 2013–17990, appearing on pages 45178–45181, in the issue of Friday, July 26, 2013, make the following correction:

On page 45181, the Table titled ''AFTERSCHOOL SNACKS SERVED IN AFTERSCHOOL CARE PROGRAMS'' is corrected to read as set forth below:

AFTERSCHOOL SNACKS SERVED IN AFTERSCHOOL CARE PROGRAMS

| | |
|---|---|
| CONTIGUOUS STATES: | |
| PAID | 0.07 |
| REDUCED PRICE | 0.40 |
| FREE | 0.80 |
| ALASKA: | |
| PAID | 0.11 |
| REDUCED PRICE | 0.65 |
| FREE | 1.30 |
| HAWAII: | |
| PAID | 0.08 |
| REDUCED PRICE | 0.47 |
| FREE | 0.94 |

*Payment listed for Free and Reduced Price Lunches include both section 4 and section 11 funds.

[FR Doc. C1–2013–17990 Filed 8–2–13; 8:45 am]

**BILLING CODE 1501–01–D**

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the Minnesota Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a meeting of the Minnesota Advisory Committee to the Commission will convene by conference call at 12:00 p.m. CST and adjourn at 1:00 p.m. CST on August 15, 2013. The purpose of the meeting is to allow Committee members the opportunity to discuss and vote on the Committee's report regarding unemployment disparities in Minnesota. The meeting will also include an orientation to new members of the Committee.

This meeting is available to the public through the following toll-free call-in number: 888–359–3627, conference ID: 9988503. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to submit written comments. The comments must be received in the regional office by September 3, 2013. The address is U.S. Commission on

Civil Rights, Midwestern Regional Office, 55 W Monroe St., Suite 410, Chicago, IL 60603. Comments may be emailed to *callen@usccr.gov.* Records generated by this meeting may be inspected and reproduced at the Midwestern Regional Office, as they become available, both before and after the meeting, and they will be uploaded onto the database at *www.facadatabase.gov.* Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *www.usccr.gov,* or to contact the Midwestern Regional Office at the above email or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Chicago, IL, July 31, 2013.

**David Mussatt,**

*Acting Chief, Regional Programs Coordination Unit.*

[FR Doc. 2013–18805 Filed 8–2–13; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* Bureau of Industry and Security (BIS).

*Title:* Special Priorities Assistance.

*OMB Control Number:* 0694–0057.

*Form Number(s):* BIS–999.

*Type of Request:* Regular submission (extension of a currently approved information collection).

*Burden Hours:* 600.

*Number of Respondents:* 1,200.

*Average Hours Per Response:* 30 minutes.

*Needs and Uses:* The information collected from defense contractors and suppliers on Form BIS–999, Request for Special Priorities Assistance, is required for the enforcement and administration of special priorities assistance under the Defense Production Act, the Selective Service Act and the Defense Priorities and Allocation System regulation. It is used by Government personnel to provide assistance to these companies when placing rated orders, to obtain timely delivery of products, materials or services from suppliers, or for any other reason under the DPAS, in support of approved national programs.

*Affected Public:* Businesses and other for-profit organizations.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain benefits.

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *jjessup@doc.gov*.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jasmeet Seehra, Office of Management and Budget (OMB) Desk Officer, by email to *Jasmeet_K._Seehra@omb.eop.gov,* or fax to (202) 395–7285.

Dated: July 31, 2013.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2013–18818 Filed 8–2–13; 8:45 am]

**BILLING CODE 3510–33–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–570–966]**

### Drill Pipe From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2011

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (the Department) has completed its administrative review of the countervailing duty (CVD) order on drill pipe from the People's Republic of China for the period March 3, 2011, through December 31, 2011. On April 5, 2013, we published the preliminary results of this review.[1]

We provided interested parties with an opportunity to comment on the *Preliminary Results.* Our analysis of the comments submitted has resulted in a change to the net subsidy rate for Shanxi Yida Special Steel Imp. & Exp. Co., Ltd. and its cross-owned affiliates (collectively, Yida Group). The final net subsidy rate is listed below in the section entitled ''Final Results of Review.''

[1] *See Drill Pipe from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review; 2011,* 78 FR 20615 (April 5, 2013) (*Preliminary Results*).

**DATES:** *Effective Date:* August 5, 2013

**FOR FURTHER INFORMATION CONTACT:** Kristen Johnson, AD/CVD Operations, Office 8, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–4793.

**SUPPLEMENTARY INFORMATION:**

### Background

Following the *Preliminary Results,* we received case briefs from the Government of the People's Republic of China (GOC) and Yida Group on May 6, 2013. On June 24, 2013, we rejected the GOC's case brief because it contained untimely filed new factual information and informed the GOC that it could re-submit its case brief excluding the new information; on June 26, 2013, the GOC re-submitted its case brief. No interested party submitted a rebuttal brief. We did not hold a hearing in this review, as one was not requested.

### Scope of the Order

The scope of the order consists of steel drill pipe and steel drill collars, whether or not conforming to American Petroleum Institute (API) or non-API specifications.[2] The merchandise subject to the order is currently classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) categories: 7304.22.0030, 7304.22.0045, 7304.22.0060, 7304.23.3000, 7304.23.6030, 7304.23.6045, 7304.23.6060, 8431.43.8040 and may also enter under 8431.43.8060, 8431.43.4000, 7304.39.0028, 7304.39.0032, 7304.39.0036, 7304.39.0040, 7304.39.0044, 7304.39.0048, 7304.39.0052, 7304.39.0056, 7304.49.0015, 7304.49.0060, 7304.59.8020, 7304.59.8025, 7304.59.8030, 7304.59.8035, 7304.59.8040, 7304.59.8045, 7304.59.8050, and 7304.59.8055. Although the HTSUS subheadings are provided for convenience and customs purposes, the written product description, available in *Drill Pipe From the People's Republic of China: Countervailing Duty Order,* 76 FR 11758 (March 3, 2011) (*CVD Order*), remains dispositive.

[2] *See* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, regarding ''Issues and Decision Memorandum for the Final Results of the Countervailing Duty Administrative Review of Drill Pipe from the People's Republic of China,'' signed concurrently with this notice and herein incorporated by reference (Final Decision Memorandum) for a complete description of the scope of the order.

### Analysis of Comments Received

All issues raised in the case briefs are addressed in the Final Decision Memorandum.[3] A list of the issues raised is attached to this notice as an Appendix. The Final 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 Final Decision Memorandum can be accessed directly on the internet at *http://www.trade.gov/ia/.* The signed Final Decision Memorandum and the electronic versions of the Final Decision Memorandum are identical in content.

### Final Results of Review

In accordance with 19 CFR 351.221(b)(5), we calculated a subsidy rate for the mandatory respondent, Yida Group.

| Producer/exporter | Net subsidy rate (percent) |
|---|---|
| Shanxi Yida Special Steel Imp. & Exp. Co., Ltd. and its cross-owned affiliates Shanxi Yida Special Steel Group Co., Ltd. and Shanxi Yida Petroleum Equipment Manufacturing Co., Ltd. (collectively, Yida Group) .... | 5.07 |

### Assessment Rates

The Department intends to issue appropriate assessment instructions directly to U.S. Customs and Border Protection (CBP) 15 days after the date of publication of these final results, to liquidate shipments of subject merchandise by Yida Group entered, or withdrawn from warehouse, for consumption on or after March 3, 2011, through December 31, 2011.

### Cash Deposit Instructions

The Department also intends to instruct CBP to collect cash deposits of estimated CVDs in the amount shown above on shipments of subject merchandise by Yida Group entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. For all non-reviewed companies, we will instruct CBP to continue to collect cash deposits at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to companies covered by this order, but not examined in this review, are those established in the most recently completed segment of the proceeding for each company.[4] These cash deposit requirements, when imposed, shall remain in effect until further notice.

### Administrative Protective Order

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: July 29, 2013.

**Paul Piquado,**

*Assistant Secretary+ for Import Administration.*

### Appendix—Issues in Decision Memorandum

Comment 1: Double Counting
Comment 2: Policy Lending to Drill Pipe Producers
Comment 3: Calculation of Benefit under Policy Lending to Drill Pipe Producers
Comment 4: Electricity Benchmark Rates
Comment 5: Calculation of Benefit under Provision of Electricity for Less Than Adequate Remuneration
Comment 6: Sales Denominator for Shanxi Yida Special Steel Imp. & Exp. Co., Ltd.

[FR Doc. 2013–18856 Filed 8–2–13; 8:45 am]

BILLING CODE 3510–DS–P

[3] *See id.*

[4] *See CVD Order,* 76 FR at 11759.

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–533–825]**

### Polyethylene Terephthalate (PET) Film, Sheet, and Strip From India: Final Results of the Expedited Second Sunset Review of the Countervailing Duty Order

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

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

**SUMMARY:** On April 2, 2013, the Department of Commerce (''Department'') initiated the second sunset review of the countervailing duty order on polyethylene terephthalate (PET) film, sheet, and strip (''PET film'') from India. The Department finds that revocation of this countervailing duty order (CVD'') would be likely to lead to the continuation or recurrence of net countervailable subsidies at the rates in the ''Final Results of Review'' section of this notice.

**FOR FURTHER INFORMATION CONTACT:** Sean Carey or Dana Mermelstein, 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) 482–3964 or 482–1391, respectively.

**SUPPLEMENTARY INFORMATION:**

### Background

The CVD order on PET film from India was published on July 1, 2002. *See Notice of Countervailing Duty Order: Polyethylene Terephthalate Film, Sheet, and Strip From India,* 67 FR 44179 (July 1, 2002). On April 2, 2012, the Department initiated the second sunset review of the order, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). *See Initiation of Five-Year (''Sunset'') Reviews,* 78 FR 19647 (April 2, 2013). The Department received notices of intent to participate from DuPont Teijin Films, Mitsubishi Polyester Film, Inc., and SKC, Inc. (collectively, ''domestic interested parties'') within the deadline specified in 19 CFR 351.218(d)(1)(i). The Department received an adequate substantive response to the notice of initiation from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). The Department received no substantive responses from the Government of India (''GOI'') and respondent interested parties.

The regulations provide, at 19 CFR 351.218 (e)(1)(ii)(A), that the Department will normally conclude that respondent interested parties have provided adequate response to a notice of initiation where it receives complete substantive responses from respondent interested parties accounting on average for more than 50 percent, on a volume basis (or a value basis, if appropriate), of the total exports of the subject merchandise to the United States over the five calendar years preceding the year of publication of the notice of initiation. Moreover, in a sunset review of a CVD order, the Department will

normally conduct a full review only if it receives adequate responses from domestic and respondent interested parties and a complete substantive response from the foreign government. *See* 19 CFR 351.218(e)(2) and 351.218(e)(1)(ii)(B) and (C). Because the Department received no responses from the GOI and respondent interested parties, the Department is conducting an expedited (120-day) sunset review of the CVD order on PET film from India pursuant to 19 CFR 351.218(e)(1)(ii)(C)(2).

**Scope of the Order**

The products covered by the order are all gauges of raw, pretreated, or primed PET film, whether extruded or coextruded. Excluded are metalized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches thick. Imports of PET film are classifiable in the Harmonized Tariff Schedule of the United States (''HTSUS'') under item number 3920.62.00.90. Effective July 1, 2003, the HTSUS subheading 3920.62.00.00 was divided into 3920.62.00.10 (metallized PET film) and 3920.62.00.90 (non-metallized PET film). Although the HTSUS numbers are provided for convenience and customs purposes, the written product description remains dispositive.

**Analysis of Comments Received**

All issues raised in this review are addressed in the Issues and Decision Memorandum (''Decision Memorandum'') from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, dated concurrently with this notice, which is hereby adopted by this notice. The issues discussed in the Decision Memorandum include the likelihood of continuation or recurrence of a countervailable subsidy and the net countervailable subsidy likely to prevail if the order was revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and in the Central Records Unit in room 7046 of the main Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Internet at *http://ia.ita.doc.gov/ia/*. The signed Decision Memorandum and electronic versions of the Decision Memorandum are identical in content.

**Final Results of Review**

Pursuant to sections 752(b)(1) and (3) of the Act, the Department determines that revocation of the CVD order on PET film from India would be likely to lead to continuation or recurrence of countervailable subsidies at the following net countervailable subsidy rates:

| Manufacturers/exporters/producers | Net countervailable subsidy (percent) |
|---|---|
| Ester Industries Ltd | 27.37% *ad valorem* |
| Garware Polyester Ltd | 33.42% *ad valorem* |
| Polyplex Corporation Ltd | 22.69% *ad valorem* |
| All others | 29.34% *ad valorem* |

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 orders is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

The Department is issuing and publishing these final results and this notice in accordance with sections 751(c), 752(b), and 777(i)(1) of the Act.

Dated: July 30, 2013.

**Paul Piquado,**

*Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[Docket No. 121025586–3654–01]**

**RIN 0648–XC326**

### Listing Endangered or Threatened Species: 12-Month Finding on a Petition To Delist the Southern Resident Killer Whale

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

**ACTION:** Notice of 12-month petition finding.

**SUMMARY:** We, the National Marine Fisheries Service (NMFS), are issuing a 12-month finding on a petition to delist the Southern Resident killer whale (*Orcinus orca*) Distinct Population Segment (DPS) under the Endangered Species Act (ESA). We listed the Southern Resident killer whale DPS as endangered under the ESA in 2005. We accepted the petition to delist the Southern Resident killer whale DPS on November 27, 2012, initiating a public comment period and a status review. Based on our review of the petition, public comments, and the best available scientific information, we find that delisting the Southern Resident killer whale DPS is not warranted.

**DATES:** The finding announced in this document was made on August 5, 2013.

**ADDRESSES:** This finding and supporting information are available on our Web page at: *http://www.nwr.noaa.gov/protected_species/marine_mammals/killer_whale/delist_petition.html*.

**FOR FURTHER INFORMATION CONTACT:** Lynne Barre, NMFS Northwest Region, (206) 526–4745; Marta Nammack, NMFS Office of Protected Resources, (301) 427–8469.

**SUPPLEMENTARY INFORMATION:**

**ESA Statutory Provisions and Policy Considerations**

On August 2, 2012, we received a petition submitted by the Pacific Legal Foundation on behalf of the Center for Environmental Science Accuracy and Reliability, Empresas Del Bosque, and Coburn Ranch to delist the endangered Southern Resident killer whale DPS under the ESA. Copies of the petition

are available upon request (see **ADDRESSES**, above).

In accordance with section 4(b)(3)(A) of the ESA, to the maximum extent practicable within 90 days of receipt of a petition to list or delist a species as threatened or endangered, the Secretary of Commerce is required to make a finding on whether that petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted, and to promptly publish such finding in the **Federal Register** (16 U.S.C. 1533(b)(3)(A)) and commence a review of the status of the species concerned, during which we will conduct a comprehensive review of the best available scientific and commercial information. On November 27, 2012 (77 FR 70733), we made a finding that there was sufficient information indicating that the petitioned action may be warranted and requested comments to inform a status review.

After accepting a petition and initiating a status review, within 12 months of receipt of the petition we conclude the review with a determination that the petitioned action is not warranted, or a proposed determination that the action is warranted. Under specific facts, we may also issue a determination that the action is warranted but precluded. In this notice, we make a finding that the petitioned action to delist the Southern Resident killer whale DPS is not warranted.

Under the ESA, the term ''species'' means a species, a subspecies, or a DPS of a vertebrate species (16 U.S.C. 1532(16)). A joint NMFS–USFWS policy clarifies the Services' interpretation of the phrase ''Distinct Population Segment,'' or DPS (61 FR 4722; February 7, 1996). The DPS Policy requires the consideration of two elements when evaluating whether a vertebrate population segment qualifies as a DPS under the ESA: (1) Discreteness of the population segment in relation to the remainder of the species/taxon, and, if discrete; (2) the significance of the population segment to the species/taxon.

A species is ''endangered'' if it is in danger of extinction throughout all or a significant portion of its range, and ''threatened'' if it is likely to become endangered within the foreseeable future throughout all or a significant portion of its range (ESA sections 3(6) and 3(20), respectively, 16 U.S.C. 1532(6) and (20)). Thus, we interpret an ''endangered species'' to be one that is presently in danger of extinction. A ''threatened species,'' on the other hand, is not presently in danger of extinction, but is likely to become so in the foreseeable future (that is, at a later time). In other words, the primary statutory difference between a threatened and endangered species is the timing of when a species may be in danger of extinction, either presently (endangered) or in the foreseeable future (threatened). Pursuant to the ESA and our implementing regulations, we determine whether a species is threatened or endangered based on any one or a combination of the following section 4(a)(1) factors: (1) The present or threatened destruction, modification, or curtailment of habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; and (5) any other natural or manmade factors affecting the species' existence (16 U.S.C. 1533(a)(1), 50 CFR 424.11(c)).

Under section 4(a)(1) of the ESA and the implementing regulations at 50 CFR 424.11(d), a species shall be removed from the list if the Secretary of Commerce determines, based on the best scientific and commercial data available after conducting a review of the species' status, that the species is no longer threatened or endangered because of one or a combination of the section 4(a)(1) factors. A species may be delisted only if such data substantiate that it is neither endangered nor threatened for one or more of the following reasons:

(1) *Extinction.* Unless all individuals of the listed species had been previously identified and located, and were later found to be extirpated from their previous range, a sufficient period of time must be allowed before delisting to indicate clearly that the species is extinct.

(2) *Recovery.* The principal goal of the Services is to return listed species to a point at which protection under the ESA is no longer required. A species may be delisted on the basis of recovery only if the best scientific and commercial data available indicate that it is no longer endangered or threatened.

(3) *Original data for classification in error.* Subsequent investigations may show that the best scientific or commercial data available when the species was listed, or the interpretation of such data, were in error (50 CFR 424.11(d)).

## Background

Three distinct forms or ecotypes of killer whales, termed residents, transients, and offshores, are recognized in the northeastern Pacific Ocean. Resident killer whales in U.S. waters are distributed from Alaska to California, with distinct populations: Southern, Northern, Southern Alaska, and Western Alaska (Krahn *et al.,* 2002; 2004). Resident killer whales are fish eaters and live in stable matrilineal pods. The West Coast transient killer whales have a different social structure, are found in smaller groups, and eat marine mammals. Offshore killer whales are found in large groups and their diet is presumed to consist primarily of fish, including sharks. While the ranges of the different ecotypes of whales overlap in the northeastern Pacific Ocean, available genetic data indicate that there is a high degree of reproductive isolation among residents, transients, and offshores (Krahn *et al.,* 2004; NMFS, 2013).

The Southern Resident killer whale population consists of three pods, identified as J, K, and L pods, that reside for part of the year in the inland waterways of Washington State and British Columbia (Strait of Georgia, Strait of Juan de Fuca, and Puget Sound), principally during the late spring, summer, and fall (NMFS, 2008). Pods visit coastal sites off Washington and Vancouver Island, and travel as far south as central California and as far north as Southeast Alaska (Ford *et al.,* 2000; NMFS, 2008; Department of Fisheries and Oceans, unpublished data).

In 2001 we received a petition to list the Southern Resident killer whale population as threatened or endangered under the ESA (CBD, 2001) and we formed a Biological Review Team (BRT) to assist with a status review (NMFS, 2002). After conducting the status review, we determined that listing the Southern Resident killer whale population as a threatened or endangered species was not warranted because the science at that time did not support identifying the Southern Resident killer whale population as a distinct population segment as defined by the ESA (67 FR 44133; July 1, 2002). Because of the uncertainties regarding killer whale taxonomy (i.e., whether killer whales globally should be considered as one species or as multiple species and/or subspecies), we announced we would reconsider the taxonomy of killer whales within 4 years. Following the determination, the Center for Biological Diversity, and other plaintiffs, challenged our ''not warranted'' finding under the ESA in U.S. District Court. The U.S. District Court for the Western District of Washington issued an order on December 17, 2003, which set aside our ''not warranted'' finding and remanded the matter to us for redetermination of

whether the Southern Resident killer whale population should be listed under the ESA (*Center for Biological Diversity* v. *Lohn,* 296 F. Supp. 2d. 1223 (W.D. Wash. 2003)). The court found that where there is ''compelling evidence that the global *Orcinus orca* taxon is inaccurate,'' the agency may not rely on ''a lack of consensus in the field of taxonomy regarding the precise, formal taxonomic redefinition of killer whales.'' As a result of the court's order, we co-sponsored a Cetacean Taxonomy workshop in 2004, which included a special session on killer whales, and reconvened a BRT to prepare an updated status review document for Southern Resident killer whales (NMFS, 2004).

The BRT agreed that the Southern Resident killer whale population likely belongs to an unnamed subspecies of resident killer whales in the North Pacific, which includes the Southern and Northern Residents, as well as the resident killer whales of Southeast Alaska, Prince William Sound, Kodiak Island, the Bering Sea and Russia (but not transients or offshores). The BRT concluded that the Southern Resident killer whale population is discrete and significant with respect to the North Pacific Resident taxon and therefore should be considered a DPS. In addition, the BRT conducted a population viability analysis which modeled the probability of species extinction under a range of assumptions. Based on the findings of the status review and an evaluation of the factors affecting the DPS, we published a proposed rule to list the Southern Resident killer whale DPS as threatened on December 22, 2004 (69 FR 76673). After considering public comments on the proposed rule and other available information, we reconsidered the status of the Southern Resident killer whale DPS and issued a final rule to list the Southern Resident killer whale DPS as endangered on November 18, 2005 (70 FR 69903).

Following the listing, we designated critical habitat, completed a recovery plan, and conducted a 5-year review for the Southern Resident killer whale DPS. We issued a final rule designating critical habitat for the Southern Resident killer whale DPS November 29, 2006 (71 FR 69055). The designation includes three specific areas: (1) the Summer Core Area in Haro Strait and waters around the San Juan Islands; (2) Puget Sound; and (3) the Strait of Juan de Fuca, which comprise approximately 2,560 square miles (6,630 square km) of Puget Sound. The designation excludes areas with water less than 20 feet (6.1 m) deep relative to extreme high water. After engaging stakeholders and providing multiple drafts for public comment, we announced the Final Recovery Plan for the Southern Resident killer whale DPS on January 24, 2008 (73 FR 4176). We have continued working with partners to implement actions in the recovery plan. In March 2011, we completed a 5-year review of the ESA status of the Southern Resident killer whale DPS, concluding that no change was needed in its listing status and that the Southern Resident killer whale DPS would remain listed as endangered (NMFS, 2011). The 5-year review also noted that there was no relevant new information for this species regarding the application of the DPS policy.

**Petition Finding**

On August 2, 2012, we received a petition submitted by the Pacific Legal Foundation on behalf of the Center for Environmental Science Accuracy and Reliability, Empresas Del Bosque, and Coburn Ranch to delist the endangered Southern Resident killer whale DPS under the ESA. The petitioners contend that there is no scientific basis for the designation of the unnamed North Pacific Resident subspecies of which the Southern Resident killer whale population is a purported DPS. The petitioners also contend that the killer whale DPS does not constitute a listable unit under the ESA because NMFS is without authority to list a DPS of a subspecies. They conclude that the listing of the Southern Resident killer whale DPS was in error and is illegal and therefore NMFS should delist the DPS.

The petition focused entirely on the basis for identifying the North Pacific Resident killer whales as a subspecies and the reference unit for the Southern Resident DPS and did not include any information regarding the five section 4(a)(1) factors or status of the population. The petitioners provided both a scientific argument regarding the biological basis for the subspecies and DPS determination and also a legal argument regarding the subspecies and DPS determination under the ESA. There was no information presented regarding past or present numbers and distribution of the species, the threats faced by the species, or the status of the species over all or a significant portion of its range.

The petition presented new information regarding genetic samples and data analysis pertinent to the status of the North Pacific Resident population as a subspecies and the subsequent Southern Resident killer whale DPS determination. The source of the new information was primarily a scientific peer reviewed journal article published subsequent to the listing (Pilot *et al.,* 2010), which includes information regarding breeding between different ecotypes of killer whales (i.e., offshores and transients). The petitioners also cited new articles regarding killer whale vocalizations, and reviewed different types of information considered by the BRT and presented in the status review report (NMFS, 2004).

On November 27, 2012, we found that the information contained in the petition, viewed in the context of information readily available in our files, presented substantial scientific information indicating the petitioned action may be warranted. We noted that information and results, similar to those presented in Pilot *et al.* (2010), were available at the time of the Status Review (NMFS, 2004), Cetacean Taxonomy Workshop (Reeves *et al.,* 2004), DPS determination, and listing decision. In addition to the information presented in the petition, we also acknowledged data from additional new genetic samples and peer reviewed scientific journal articles (e.g., Morin *et al.,* 2010; Ford *et al.,* 2011) regarding taxonomy and breeding behavior of killer whales that address the discreteness question and the DPS determination.

Our 90-day finding accepting the petition solicited information from the public and initiated a status review of the Southern Resident killer whale DPS to gather any additional information to inform our review of the petitioned action and our application of the DPS policy. During the public comment period for receiving information, which closed on January 28, 2013, we received over 2,750 comments. Despite our request for specific scientific and commercial information, the vast majority of commenters simply noted their opposition to the petition to delist the Southern Resident killer whale DPS, while a handful of comments supported the petition. Several commenters disagreed with the 90-day finding and suggested that the petition should be rejected and not considered any further. We did receive several substantive comments regarding both the biological and legal aspects of the DPS determination as raised in the petition.

We provided a summary of the substantive comments to the NMFS Northwest Fishery Science Center (Center) with a request to evaluate whether any of the new information would suggest alternative conclusions than those of the BRT regarding the DPS determination in the 2004 status review (Krahn *et al.,* 2004). Specifically, we

requested that the Center consider if there is new best available information that would lead to different conclusions from those in Krahn *et al.* (2004) regarding the North Pacific Resident killer whale subspecies or the discreteness or significance of the Southern Resident killer whale population. The Center provided a status review update (NMFS, 2013) that included a review of (1) taxonomic issues addressed by the 2004 BRT (Krahn *et al.,* 2004); (2) biological points raised in the petition; (3) information provided by the public; (4) new information on morphology, feeding ecology, diet, and genetics; (5) conclusions about the determinations of the reference taxonomic group, or taxon, for evaluating discreteness and significance; and (6) conclusions about the DPS determination made in 2004. The status review update and determinations about the taxon and DPS (NMFS, 2013) informs our 12-month finding about the petitioned action to delist the Southern Resident killer whale DPS.

**Determination of Taxon and DPS**

Based on the best information available, we previously concluded, with advice from the 2004 BRT, that the Southern Resident killer whale population (J, K, and L pods) met the two criteria of the DPS policy and constituted a DPS of the North Pacific Resident subspecies. The following discussion describes our evaluation of the North Pacific Resident subspecies and DPS status of the Southern Resident population during the 2005 rulemaking, and our evaluation of its DPS status based on the new information available since that rulemaking and best available science review and advice from the Center (NMFS, 2013). The evaluation considers: (1) The reference taxon for consideration under the DPS policy; (2) the discreteness of the Southern Resident population from other populations within that taxon; and (3) the significance of the Southern Resident population to that taxon.

*Reference Taxon*

During the 2005 rulemaking we concluded that the proper reference taxon for consideration under the DPS policy was an unnamed subspecies of North Pacific Resident killer whales, distinct from North Pacific transient killer whales, North Pacific offshore killer whales, and other resident killer whales world-wide. We reached this conclusion based on several lines of evidence, including differences in morphology, behavior, diet and feeding ecology, acoustical dialects and practices, and both mtDNA and nuclear DNA variation (Krahn *et al.,* 2004). The lines of evidence supporting differentiation between the ecotypes of North Pacific whales are relevant to and inform the basis for identifying the North Pacific Resident killer whales taxonomically, as a subspecies (NMFS, 2013).

After reviewing information in the petition, the public comments, and the scientific literature published in the 9 years since the 2004 status review, we find no new information that leads to a different conclusion from that reached in the 2005 rulemaking, and the weight of evidence continues to support our conclusion that the North Pacific Resident killer whales represent a taxonomic subspecies. To the contrary, new information is consistent with and further supports the 2005 finding. All of the new genetic data and analyses published since 2004, including the Pilot *et al.* (2010) paper discussed extensively in the petition, show a high degree of contemporary reproductive isolation among the North Pacific killer whale ecotypes (resident, transients, and offshores). No genetic analysis published since the 2004 status review has indicated a higher level of interbreeding among these ecotypes than was indicated by the analysis considered by the 2004 BRT.

In addition to new genetic data and analyses, the studies on feeding ecology and diet published since 2004 are generally consistent with or strengthen the 2004 BRT's conclusions that the ecotypes differ in diet and feeding ecology. The one new study that addresses morphological differences between the ecotypes (Zerbini *et al.,* 2007) supports the 2004 BRT's conclusion that the ecotypes can be morphologically differentiated.

No new information on acoustics or behavior contradicts the conclusions of the 2004 BRT. Recent observations (Center unpublished data, 2013) indicate that North Pacific offshore killer whales consume at least some Chinook salmon (indicating a similarity with North Pacific Residents), but observations, stable isotopes, and tooth wear data indicate substantial dietary differences (Dahlheim *et al.,* 2008; Ford *et al.,* 2011).

Finally, in 2012 the Society of Marine Mammalogy formally recognized North Pacific Residents as an unnamed subspecies (Committee on Taxonomy, 2012). Recognition by this organization alone does not amount to a ''precise, formal taxonomic redefinition of killer whales,'' but it is an important addition to the weight of evidence regarding the existence of the North Pacific resident killer whale subspecies.

Based on the above evaluation, we conclude that the best available scientific information indicates that the North Pacific Resident subspecies is the appropriate reference taxon for considering whether the Southern Resident killer whale population is discrete and significant, despite the fact that the taxonomic community has not yet formally named the subspecies. As noted in the 2004 BRT report, ''formal taxonomic changes are often slow to occur and lag behind current knowledge.''

*Discreteness of the Southern Resident Population From Other Populations Within the Taxon*

In our 2005 rulemaking we concluded that there was strong evidence that the Southern Resident killer whale population is discrete from other North Pacific Resident killer whale populations as defined by the 1996 DPS policy, citing significant genetic differentiation, separate demographic trajectories, differences in core and summer range, and behavioral differences from other resident populations (Krahn *et al.,* 2004).

The new information subsequent to 2004 is consistent with and generally strengthens the conclusion that the Southern Resident killer whale population is a discrete population within the North Pacific Resident taxon. In particular, recent genetic studies all indicate that the Southern Resident population is significantly differentiated from other resident populations. A recent analytical comparison of demographic rates found significant differences in both survival and fecundity rates between the Southern Resident population and the Northern Resident population, providing further evidence of demographic discreteness (Ward *et al.,* in press). New information on the winter range of the Southern Resident population provides a considerably more complete picture than was available in 2004, and continues to indicate that K and L pods, in particular, have a winter and summer range distinct from other resident populations, although the Southern Resident population does overlap substantially with some of the Northern Resident population. In short, as in 2004, all the available information clearly indicates that the Southern Resident population is discrete from other populations in the North Pacific resident subspecies.

*The Significance of the Southern Resident Population to the Taxon*

Below we discuss each of the factors listed by the 2004 BRT in support of its finding that the Southern Resident population is significant to the North Pacific Resident killer whale subspecies.

Ecological setting and range—The 2004 BRT noted that the Southern Resident population appeared to occupy a distinct ecological setting, being the only North Pacific resident population to spend substantial time in the California Current ecosystem and having a diet somewhat different from other resident populations, particularly those in Alaska. The BRT also cited the possibility that the Southern Resident population historically utilized the large runs of salmon to the Sacramento and Columbia River basins as a major source of prey. With regard to range, the BRT noted that the Southern Resident population was the only resident population observed spending time in Puget Sound and off the coasts of Washington, Oregon, and California and that if it were to become extirpated, this would result in a significant reduction in the North Pacific Residents' range.

New information since 2004 generally continues to support most of these conclusions, but also challenges some of them. In particular, new information on the coastal distribution of the Southern and Northern Resident populations confirms that the Southern Residents spend substantial time in coastal areas of Washington, Oregon and California and utilize salmon returns to these areas (Center, unpublished data). However, there is also new information indicating that the Northern Resident population may spend more time off the Washington coast than was previously believed (Riera *et al.,* 2011; Center, unpublished data). In addition, diet information on the Alaskan resident populations indicates that some of these populations also consume salmon, although not the Chinook salmon that dominate the Southern and Northern Resident diets (Saulitis *et al.,* 2000). Updated diet data from the Southern and Northern Resident populations confirm that these two populations have very similar diets and consume many of the same salmon stocks (Ford *et al.,* 2010; Hanson *et al.,* 2010). Overall, the Southern resident population remains unique in occupying the southernmost part of the North Pacific Resident's range, and is clearly occupying a different ecological setting from populations in Alaska and farther west around the Pacific Rim. The southern portion of the Southern Resident population's range is quite distinct from that of the Northern Resident population, even though the Southern and Northern residents clearly share a similar ecological setting throughout much of their ranges.

Genetic differentiation—Genetic data available since 2004 confirm or strengthen the conclusion that the Southern Resident population is genetically unique from other resident populations. In particular, there are no new data to change the 2004 BRT's conclusions that the Southern Resident population differs markedly from other North Pacific resident populations at both nuclear and mitochondrial genes.

Behavioral and cultural diversity—The 2004 BRT noted several instances of known and apparent cultural differentiation among resident killer whale populations, and hypothesized, based on studies in other long-lived mammals, that such diversity could be important for the survival of the North Pacific Resident taxon as a whole. Since 2004, several studies have contributed further information to this topic. For example, Ward *et al.* (2011, unpublished report) found significant differences in survival among the three Southern Resident pods and between the Southern and Northern Resident populations. These differences are likely related to differences in diet and habitat use, both of which appear to be culturally determined. Riesch *et al.* (2012) and Foote (2012) reviewed cultural differences, particularly acoustic behavior and prey preferences, among killer whale populations and ecotypes, and concluded that such cultural differences may be leading to reproductive isolation and subsequent ecological speciation. On the whole, therefore, the available data appear consistent with the BRT's conclusion that such cultural differences may be important factors in the overall viability of the North Pacific Resident killer whale taxon.

In conclusion, the new information on genetics and behavioral and cultural diversity available since 2004 is consistent with or strengthens the 2004 BRT's conclusion that the Southern Resident killer whale population meets the significance criterion of the DPS policy. New information on ecological setting and range tends to weaken the 2004 BRT's conclusion somewhat, as it indicates greater overlap in range and diet with other resident and offshore populations than was previously believed. However, in total, the new information available since 2004 regarding significance appears consistent with the 2004 BRT's conclusion.

**12-Month Finding**

As summarized above, the petitioners focused on biological and legal aspects of identification of the North Pacific Resident killer whale as a subspecies and the DPS determination for the Southern Resident killer whale population and assert that the listing was in error. The petitioners contend that the Southern Resident killer whale DPS does not constitute a listable unit under the ESA because there is no scientific basis for the identification of the unnamed North Pacific Resident subspecies of which the Southern Resident killer whale population is a DPS and because NMFS is without authority to list a DPS of a subspecies. As described above, we reviewed the available scientific information available since 2004, and we find that the majority of new information supports or strengthens the DPS determination. Further, in accordance with the DPS policy and after reviewing the petition, information from the public, and the best available information, we determine that the Southern Resident population is discrete and significant with respect to the North Pacific Resident subspecies, and therefore, constitutes a valid DPS. This determination is consistent with the previous DPS determination (Krahn *et al.,* 2004) and, therefore, we conclude that the original data for classification were not in error and delisting is not warranted. In the absence of such error, we continue to recognize the Southern Resident killer whale DPS as a listable unit.

Petitioners' legal argument regarding the authority to list the DPS of a subspecies was raised in the context of the 1996 DPS policy and in that policy we stated, ''[t]he Services maintain that the authority to address DPS's extends to species in which subspecies are recognized, since anything included in the taxon of lower rank is also included in the higher ranking taxon.'' (61 FR 4722; February 7, 1996). The position taken in the DPS policy is grounded in the statutory language of the ESA. The ESA authorizes listing of species and defines ''species'' to include ''any subspecies of fish or wildlife or plants and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature,'' 16 U.S.C. Section 1532 (16). Because the definition of species includes ''subspecies'' it is reasonable to interpret the phrase ''DPS of any species'' to include ''DPS of any subspecies.'' In addition, several courts have upheld the1996 DPS policy as a reasonable interpretation of the ESA entitled to

deference (*NW Ecosystem Alliance* v. *USFWS,* 475 F3d 1136 (2007); *Center for Biological Diversity* v. *Lohn,* 296 F. Supp. 2d 1223 (W.D. Wash. 2003)); and one court expressly addressed the issue raised here and upheld the Services' interpretation that a DPS of a subspecies is a listable unit (*Center for Biological Diversity* v. *USFWS,* 274 Fed. Appx. 542, n.5 (9th Cir. 2008)) (unpublished). For this reason also, we continue to recognize the Southern Resident killer whale DPS as a listable unit.

In addition to delisting because of an error in the original classification, we may also delist species based on extinction or recovery. The petition did not include any information on the number of whales in the population, threats, or risk of extinction. As part of the ESA listing of the Southern Resident killer whale DPS (70 FR 69903; November 18, 2005) we conducted an analysis of the five ESA section 4(a)(1) factors and concluded that the DPS was in danger of extinction and listed it as endangered. While progress toward recovery has been achieved since the listing, as described in the 5-year review, the status of the DPS remains as endangered. Since the 5-year review was completed, additional actions have been taken to address threats, such as regulations to protect killer whales from vessel impacts (76 FR 20870; April 14, 2011), completion of a scientific review of the effects of salmon fisheries on Southern Resident killer whales (Hilborn, 2012), and ongoing technical working groups with the Environmental Protection Agency to assess contaminant exposure. However, the population growth outlined in the biological recovery criteria and some of the threats criteria have not been met. We have no new information that would change the recommendation in our 5-year review that the Southern Resident killer whale DPS remain classified as endangered (NMFS, 2011). Our determination that the Southern Resident killer whale population constitutes a DPS under the ESA and previous conclusion that the DPS is in danger of extinction and should retain endangered status all support our finding that the petitioned action to delist the Southern Resident killer whale DPS is not warranted.

## References Cited

The complete citations for the references used in this document can be obtained by contacting NMFS or on our Web page (See **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT**).

**Authority:** 16 U.S.C. 1531 *et seq.*

Dated: July 30, 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. 2013–18824 Filed 8–2–13; 8:45 am]

**BILLING CODE 3510–22–P**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XC497**

### Takes of Marine Mammals Incidental to Specified Activities; Navy Research, Development, Test and Evaluation Activities at the Naval Surface Warfare Center Panama City Division

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

**ACTION:** Notice; issuance of Incidental Take Authorization.

**SUMMARY:** In accordance with the Marine Mammal Protection Act (MMPA) regulations, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to the U.S. Navy (Navy) to take marine mammals, by harassment, incidental to conducting research, development, test and evaluation (RDT&E) activities at the Naval Surface Warfare Center Panama City Division (NSWC PCD).

**DATES:** Effective July 27, 2013, through July 26, 2014.

**ADDRESSES:** A copy of the final IHA and application are available by writing to P. Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910 or by telephoning the contacts listed here. A copy of the application containing a list of the references used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.*

The Navy has prepared an ''Overseas Environmental Assessment Testing the An/AQS–20A Mine Reconnaissance Sonar System in the NSWC PCD Testing Range, 2012–2014,'' which is also available at the same internet address. NMFS has prepared an ''Environmental Assessment for the Issuance of an Incidental Harassment Authorization to Take Marine Mammals by Harassment Incidental to Conducing High-Frequency Sonar Testing Activities in the Naval Surface Warfare Center Panama City Division'' and signed a Finding of No Significant Impact (FONSI) on July 24, 2012, prior to the issuance of the IHA for the Navy's activities in July 2012 to July 2013. This notice and the documents it references provide all relevant environmental information and issues related to the Navy's activities and the IHA. Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

**FOR FURTHER INFORMATION CONTACT:** Howard Goldstein or Jolie Harrison, Office of Protected Resources, NMFS, 301–427–8401.

**SUPPLEMENTARY INFORMATION:**

## Background

Sections 101(a)(5)(A) and (D) of the MMPA, as amended (16 U.S.C. 1361(a)(5)(D)), direct the Secretary of Commerce (Secretary) to authorize, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) if certain findings are made and, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental taking of marine mammals shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). The authorization must set forth the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as: ''…an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

The National Defense Authorization Act of 2004 (NDAA) (Public Law 108–136) removed the ''small numbers'' and ''specified geographical region'' limitations and amended the definition of ''harassment'' as it applies to a ''military readiness activity'' to read as follows (Section 3(18)(B) of the MMPA):

(i) any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or

(ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B harassment].

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) establishes a 45-day time limit for NMFS's review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the public comment period, NMFS must either issue or deny the authorization.

**Summary of Request**

On November 26, 2012, NMFS received an application from the Navy requesting that NMFS issue an IHA for the take, by Level B harassment only, of marine mammals incidental to conducting testing of the AN/AQS–20A Mine Reconnaissance Sonar System (hereafter referred to as the Q–20) in the Naval Surface Warfare Center, Panama City Division (NSWC PCD) testing range in the Gulf of Mexico (GOM) from July 2013 through July 2014. The Q–20 sonar test activities are planned to be conducted within the U.S. Exclusive Economic Zone (EEZ) seaward of the territorial waters of the United States (beyond 22.2 kilometers [km] or 12 nautical miles [nmi]) in the GOM (see Figure 2–1 of the Navy IHA application). On June 6, 2013, NMFS published a notice in the **Federal Register** (78 FR 34047) making preliminary determinations and proposing to issue an IHA. The notice initiated a 30-day public comment period. Additional information on the demolition and construction activities at the Children's Pool Lifeguard Station is contained in the application which is available upon request (see **ADDRESSES**).

**Description of the Specified Activity**

The purpose of the Navy's activities is to meet the developmental testing requirements of the Q–20 sonar system by verifying its performance in a realistic ocean and threat environment and supporting its integration with the Remote Multi-Mission Vehicle (RMMV), and ultimately the Littoral Combat Ship (LCS). Testing would include component, subsystem-level, and full-scale system testing in an operational environment. The need for the planned activities is to support the timely deployment of the Q–20 to the operational Navy for Mine Countermeasure (MCM) activities abroad, allowing the Navy to meet its statutory mission to deploy naval forces equipped and trained to meet existing and emergent threats worldwide and to enhance its ability to operate jointly with other components of the armed forces. Testing would include component, sub-system level, and full-scale system testing in the operational environment.

The planned activities are to test the Q–20 from the RMMV and from surrogate platforms such as a small surface vessel or helicopter. The RMMV or surrogate platforms will be deployed from the Navy's new LCS or its surrogates. The Navy is evaluating potential environmental effects associated with the Q–20 test activities planned for the Q–20 study area (see below for detailed description of the Study Area), which includes non-territorial waters of Military Warning Area 151 (W–151; includes Panama City Operating Area [OPAREA]). Q–20 test activities occur at sea in the waters present within the Q–20 study area and do not involve any land-based facilities. No hazardous waste is generated at sea during Q–20 test activities. There are two components associated with the Q–20 test activities, which are addressed below:

*Surface Operations*

A significant portion of Q–20 test activities rely on surface operations (i.e., naval and contracted vessels, towed bodies, etc.) to successfully complete the missions. The planned action includes up to 42 testing events lasting no more than 10 hours each (420 hours cumulatively) of surface operations during active sonar testing per year in the Q–20 study area. Other surface operations occur when sonar is not active. Three subcategories make up surface operations: support activities; tows; and vessel activity during deployment and recovery of equipment. Testing requiring surface operations may include a single test event (one day of activity) or a series of test events spread out over several days. The size of the surface vessels varies in accordance with the test requirements and vessel availability. Often multiple surface craft are required to support a single test event.

The first subcategory of surface operations is support activities that are required by nearly all of the Q–20 test missions within the Q–20 study area. These surface vessels serve as support platforms for testing and would be utilized to carry test equipment and personnel to and from the test sites, and are also used to secure and monitor the designated test area. Normally, these vessels remain on site and return to port following the completion of the test event; occasionally; however, they occasionally remain on station throughout the duration of the test cycle (a maximum of 10 hours of sonar per day) for guarding sensitive equipment in the water.

Additional surface operations include tows, and vessel activity during deployment and recovery of equipment. Tows involve either transporting the system to the designated test area where it is deployed and towed over a pre-positioned inert minefield or towing the system from shore-based facilities for operation in the designated test area. Surface vessels are also used to perform the deployment and recovery of the RMMV, mine-like objects, and other test systems. Surface vessels that are used in this manner normally return to port the same day. However, this is test dependent, and under certain circumstance the surface vessel may be required to remain on site for an extended period of time.

*Sonar Operations*

For the planned action, the Navy would test the Q–20 for up to 420 hours of active sonar use for 12 months starting in July 2013. Q–20 sonar operations involve the testing of various sonar systems at sea as a means of demonstrating the systems' software capability to detect, locate, and characterize mine-like objects under various environmental conditions. The data collected are used to validate the sonar systems' effectiveness and capability to meet its mission.

As sound travels through water, it creates a series of pressure disturbances (see Appendix C of the IHA application). Frequency is the number of complete cycles a sound or pressure wave occurs per unit of time (measured in cycles per second, or Hertz (Hz)). The Navy has characterized low-, mid-, or high-frequency active sonars as follows:

- Low-frequency active sonar (LFAS)—Below 1 kilohertz (kHz) (low-frequency sound sources will not be used during any Q–20 test operations);
- Mid-frequency active sonar (LFAS)—From 1 to 10 kHz (mid-frequency source sources will not be used during any Q–20 test operations); and
- High-frequency active sonar (HFAS)—Above 10 kHz (only high-

frequency sound sources would be used during Q–20 test operations).

The Q–20 sonar systems planned to be tested within the Q–20 study area ranges in frequencies from 35 kHz to greater than 200 kHz, therefore, these are HFAS systems. Those systems that operate at very high frequencies (i.e., greater than 200 kHz), well above the hearing sensitivities of any marine mammals, are not considered to affect marine mammals. Therefore, they are not included in this document. The source levels associated with Q–20 sonar systems that could affect marine mammals range from 207 decibels (dB) re 1 micro pascal (μPa) at 1 meter (m) to 212 dB re 1 μPa at 1 m. Operating parameters of the Q–20 sonar systems can be found in Appendix A, ''Supplemental Information for Underwater Noise Analysis'' of the Navy's IHA application.

*A Brief Background on Sound*

An understanding of the basic properties of underwater sound is necessary to comprehend many of the concepts and analyses presented in this document. A summary is included below. Sound is a wave of pressure variations propagating through a medium (for the sonar considered in this proposed rule, the medium is marine water). Pressure variations are created by compressing and relaxing the medium. Sound measurements can be expressed in two forms: intensity and pressure. Acoustic intensity is the average rate of energy transmitted through a unit area in a specified direction and is expressed in watts per square meter ($W/m^2$). Acoustic intensity is rarely measured directly, it is derived from ratios of pressures; the standard reference pressure for underwater sound is 1 μPa; for airborne sound, the standard reference pressure is 20 μPa (Urick, 1983).

Acousticians have adopted a logarithmic scale for sound intensities, which is denoted in decibels (dB). Decibel measurements represent the ratio between a measured pressure value and a reference pressure value (in this case 1 μPa or, for airborne sound, 20 μPa). The logarithmic nature of the scale means that each 10 dB increase is a tenfold increase in power (e.g., 20 dB is a 100-fold increase, 30 dB is a 1,000-fold increase). Humans perceive a 10-dB increase in noise as a doubling of sound level, or a 10 dB decrease in noise as a halving of the sound level. The term ''sound pressure level'' implies a decibel measure and a reference pressure that is used as the denominator of the ratio. Throughout this document, NMFS uses 1 μPa as a standard reference pressure unless noted otherwise.

It is important to note that decibels underwater and decibels in air are not the same and cannot be directly compared. To estimate a comparison between sound in air and underwater, because of the different densities of air and water and the different decibel standards (i.e., reference pressures) in water and air, a sound with the same intensity (i.e., power) in air and in water would be approximately 63 dB lower in air. Thus, a sound that is 160 dB loud underwater would have the same approximate effective intensity as a sound that is 97 dB loud in air.

Sound frequency is measured in cycles per second, or Hertz (abbreviated Hz), and is analogous to musical pitch; high-pitched sounds contain high frequencies and low-pitched sounds contain low frequencies. Natural sounds in the ocean span a huge range of frequencies: from earthquake noise at 5 Hz to harbor porpoise clicks at 150,000 Hz (150 kHz). These sounds are so low or so high in pitch that humans cannot even hear them; acousticians call these infrasonic and ultrasonic sounds, respectively. A single sound may be made up of many different frequencies together. Sounds made up of only a small range of frequencies are called ''narrowband,'' and sounds with a broad range of frequencies are called ''broadband;'' airguns are an example of a broadband sound source and tactical sonars are an example of a narrowband sound source.

When considering the influence of various kinds of sound on the marine environment, it is necessary to understand that different kinds of marine life are sensitive to different frequencies of sound. Based on available behavioral data, audiograms derived using auditory evoked potential, anatomical modeling, and other data, Southall *et al.* (2007) designate ''functional hearing groups'' and estimate the lower and upper frequencies of functional hearing of the groups. Further, the frequency range in which each group's hearing is estimated as being most sensitive is represented in the flat part of the M-weighting functions developed for each group. The functional groups and the associated frequencies are indicated below:

- Low-frequency cetaceans (13 species of mysticetes): Functional hearing is estimated to occur between approximately 7 Hz and 22 kHz.
- Mid-frequency cetaceans (32 species of dolphins, six species of larger toothed whales, and 19 species of beaked and bottlenose whales): Functional hearing is estimated to occur between approximately 150 Hz and 160 kHz.
- High-frequency cetaceans (eight species of true porpoises, six species of river dolphins, *Kogia,* the franciscana, and four species of cephalorhynchids): Functional hearing is estimated to occur between approximately 200 Hz and 180 kHz.
- Pinnipeds in Water: Functional hearing is estimated to occur between approximately 75 Hz and 75 kHz, with the greatest sensitivity between approximately 700 Hz and 20 kHz.
- Pinnipeds in Air: Functional hearing is estimated to occur between approximately 75 Hz and 30 kHz.

Because ears adapted to function underwater are physiologically different from human ears, comparisons using decibel measurements in air would still not be adequate to describe the effects of a sound on a whale. When sound travels away from its source, its loudness decreases as the distance traveled (propagates) by the sound increases. Thus, the loudness of a sound at its source is higher than the loudness of that same sound a kilometer distant. Acousticians often refer to the loudness of a sound at its source (typically measured one meter from the source) as the source level and the loudness of sound elsewhere as the received level. For example, a humpback whale three kilometers from an airgun that has a source level of 230 dB may only be exposed to sound that is 160 dB loud, depending on how the sound propagates. As a result, it is important not to confuse source levels and received levels when discussing the loudness of sound in the ocean.

As sound travels from a source, its propagation in water is influenced by various physical characteristics, including water temperature, depth, salinity, and surface and bottom properties that cause refraction, reflection, absorption, and scattering of sound waves. Oceans are not homogeneous and the contribution of each of these individual factors is extremely complex and interrelated. The physical characteristics that determine the sound's speed through the water will change with depth, season, geographic location, and with time of day (as a result, in actual sonar operations, crews will measure oceanic conditions, such as sea water temperature and depth, to calibrate models that determine the path the sonar signal will take as it travels through the ocean and how strong the sound signal will be at a given range along a particular transmission path). As sound travels through the ocean, the intensity associated with the wavefront

diminishes, or attenuates. This decrease in intensity is referred to as propagation loss, also commonly called transmission loss.

*Metrics Used in This Document*

This section includes a brief explanation of the two sound measurements (sound pressure level (SPL) and sound exposure level (SEL)) frequently used in the discussions of acoustic effects in this document.

*Sound Pressure Level*

Sound pressure is the sound force per unit area, and is usually measured in microPa, where 1 Pa is the pressure resulting from a force of one newton exerted over an area of one square meter. SPL is expressed as the ratio of a measured sound pressure and a reference level. The commonly used reference pressure level in underwater acoustics is 1 μPa, and the units for SPLs are dB re: 1 μPa.

SPL (in dB) = 20 log (pressure/reference pressure)

SPL is an instantaneous measurement and can be expressed as the peak, the peak-peak, or the root mean square (rms). Root mean square, which is the square root of the arithmetic average of the squared instantaneous pressure values, is typically used in discussions of the effects of sounds on vertebrates and all references to SPL in this document refer to the root mean square. SPL does not take the duration of a sound into account. SPL is the applicable metric used in the risk continuum, which is used to estimate behavioral harassment takes (see Level B Harassment Risk Function [Behavioral Harassment] Section).

*Sound Exposure Level*

SEL is an energy metric that integrates the squared instantaneous sound pressure over a stated time interval. The units for SEL are dB re: 1 microPa$^2$-s.

SEL = SPL + 10 log (duration in seconds)

As applied to tactical sonar, the SEL includes both the SPL of a sonar ping and the total duration. Longer duration pings and/or pings with higher SPLs will have a higher SEL. If an animal is exposed to multiple pings, the SEL in each individual ping is summed to calculate the total SEL. The total SEL depends on the SPL, duration, and number of pings received. The thresholds that NMFS uses to indicate at what received level the onset of temporary threshold shift (TTS) and permanent threshold shift (PTS) in hearing are likely to occur are expressed in SEL.

*Dates and Duration of the Specified Activity*

The Q–20 study area includes target and operational test fields located in W–151, an area within the GOM subject to military operations which also encompasses the Panama City OPAREA (see Figure 2–1 of the Navy's IHA application). The Q–20 test activities will be conducted in the non-territorial waters off the United States (beyond 22.2 km or 12 nmi) within the U.S. EEZ in the GOM. The locations and environments include:

- Wide coastal shelf to 183 meters (m) [600 feet (ft)].
- Sea surface temperature range of 27 degrees Celsius (°C) [80 degrees Fahrenheit (°F)] in summer to 10 °C (50 °F) in winter. Seasons are defined as December 23 through April 2 (winter) and July 2 through September 24 (summer) (DON, 2007a).
- Mostly sandy bottom and good underwater visibility.
- Sea heights less than 0.91 m (3 ft) during 80 percent of the time in summer and 50 percent of the time in winter (DON, 2009a).

The Navy requests an IHA for a time period of one year beginning July 27, 2013. A total of 42 Q–20 (RDT&E) test days would be conducted with a maximum sonar operation of 10 hours per a test day.

**Comments and Responses**

A notice of the proposed IHA for the Navy's NSWC PCD Q–20 testing activities was published in the **Federal Register** on June 6, 2013 (78 FR 34047). During the 30-day public comment period, NMFS received comments from the Marine Mammal Commission (Commission) and two individuals. The comments are online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Following are their substantive comments and NMFS's responses:

*Comment 1:* The Commission recommends that NMFS issue the IHA, but condition it to require the Navy to conduct its monitoring for at least 15 minutes prior to the initiation of and for at least 15 minutes after the cessation of Q–20 testing activities.

*Response:* NMFS concurs with the Commission's recommendation and has included a requirement to this effect in the IHA issued to the Navy.

*Comment 2:* Two individuals oppose the issuance of the IHA to the Navy. The Navy is killing marine mammals and the project should be defunded.

*Response:* As described in detail in the **Federal Register** notice for the proposed IHA (78 FR 34047, June 6, 2013), as well as in this document, NMFS does not believe that the Navy's Q–20 testing activities would cause injury, serious injury, or mortality to marine mammals, nor are those authorized under the IHA. The required monitoring and mitigation measures that the Navy would implement during the Q–20 testing activities would further reduce the adverse effect on marine mammals to the lowest levels practicable. NMFS anticipates only behavioral disturbance to occur during the conduct of the Q–20 testing activities.

**Description of Marine Mammals in the Area of the Specified Activity**

The marine mammal species that potentially occur within the GOM include 28 species of cetaceans and one sirenian (Jefferson and Schiro, 1997; Wursig *et al.,* 2000; see Table 1 below). In addition to the 28 species known to occur in the GOM, the long-finned pilot whale (*Globicephala melas*), long-beaked common dolphin (*Delphinus capensis*), and short-beaked common dolphin (*Delphinus delphis*) could potentially occur there; however, there are no confirmed sightings of these species in the GOM, they have been seen close and could eventually be found there (Wursig *et al.,* 2000). NMFS considers it unlikely that these three species would be exposed to sound from the planned activities and potential impacts are thus discountable. Those three species are not considered further in this document. The marine mammals that generally occur in the action area belong to three taxonomic groups: mysticetes (baleen whales), odontocetes (toothed whales), and sirenians (the West Indian manatee). Of the marine mammal species that potentially occur within the GOM, 21 species of cetaceans (20 odontocetes, 1 mysticete) are routinely present and have been included in the analysis for incidental take to the Q–20 testing operations. Marine mammal species listed as endangered under the U.S. Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*), includes the North Atlantic right (*Eubalaena glacialis*), humpback (*Megaptera novaeangliae*), sei (*Balaenoptera borealis*), fin (*Balaenoptera physalus*), blue (*Balaenoptera musculus*), and sperm (*Physeter macrocephalus*) whale, as well as the West Indian (Florida) manatee (*Trichechus manatus latirostris*). Of those endangered species, none are likely to be encountered in the study area. No species of pinnipeds are known to occur regularly in the GOM and any pinniped sighted in the study area would be considered extralimital.

The Caribbean monk seal (*Monachus tropicalis*) used to inhabit the GOM, but is considered extinct and has been delisted from the ESA. The U.S. Fish and Wildlife Service (USFWS) has jurisdiction and authority for managing the West Indian manatee including authorizing incidental take under both the MMPA and ESA. This species is thus not considered further in this analysis. All other referenced species are subject to NMFS's jurisdiction and thus included in our analysis.

In general, cetaceans in the GOM appear to be partitioned by habitat preferences likely related to prey distribution (Baumgartner *et al.,* 2001). Most species in the northern GOM concentrated along the upper continental slope in or near areas of cyclonic circulation in waters 200 to 1,000 m (656.2 to 3,280.8 ft) deep. Species sighted regularly in these waters include Risso's, rough-toothed, spinner, striped, pantropical spotted, and Clymene dolphins, as well as short-finned pilot, pygmy and dwarf sperm, sperm, *Mesoplodon* beaked, and unidentified beaked whales (Davis *et al.,* 1998). In contrast, continental shelf waters (< 200 m deep) are primarily inhabited by two species: bottlenose and Atlantic spotted dolphins (Davis *et al.,* 2000, 2002; Mullin and Fulling, 2004). Bottlenose dolphins are also found in deeper waters (Baumgartner *et al.,* 2001). The narrow continental shelf south of the Mississippi River delta (20 km [10.8 nmi] wide at its narrowest point) appears to be an important habitat for several cetacean species (Baumgartner *et al.,* 2001; Davis *et al.,* 2002). There appears to be a resident population of sperm whales within 100 km (54 nmi) of the Mississippi River delta (Davis *et al.,* 2002). The North Atlantic right, humpback, sei, fin, blue, minke, and True's beaked whale are considered extralimital and are excluded from further consideration of impacts from the NSWC PCD Q–20 testing analysis. Table 1 (below) presents information on the abundance, distribution, population status, conservation status, and population trend of the species of marine mammals that may occur in the study area during July 2013 to July 2014.

**Table 1.** The habitat, regional abundance, and conservation status of marine mammals that may occur in or near the Q–20 study area in the Gulf of Mexico (See text and Table 3–1, 3–2, and 3–3 in the Navy's application for further details).

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| Species | Habitat | Population Estimate[3] (Minimum) | ESA[1] | MMPA[2] | Population Trend[3] |
|---|---|---|---|---|---|
| Mysticetes | | | | | |
| North Atlantic right whale (Eubalaena glacialis) | Coastal and shelf | Extralimital | EN | D | Increasing |
| Humpback whale (Megaptera novaeangliae) | Pelagic, nearshore waters, and banks | Rare | EN | D | Increasing |
| Minke whale (Balaenoptera acutorostrata) | Pelagic and coastal | Rare | NL | NC | No information available |
| Bryde's whale (Balaenoptera brydei/edeni) | Pelagic and coastal | 33 (16) – Northern GOM stock | NL | NC | Unable to determine |
| Sei whale (Balaenoptera borealis) | Primarily offshore, pelagic | Rare | EN | D | Unable to determine |
| Fin whale (Balaenoptera physalus) | Continental slope, pelagic | Rare | EN | D | Unable to determine |
| Blue whale (Balaenoptera musculus) | Pelagic, shelf, coastal | Extralimital | EN | D | Unable to determine |
| Odontocetes | | | | | |
| Sperm whale (Physeter macrocephalus) | Pelagic, deep sea | 763 (560) - Northern GOM stock | EN | D | Unable to determine |
| Pygmy sperm whale (Kogia breviceps) and Dwarf sperm whale (Kogia sima) | Deep waters off the shelf | 186 (90) - Northern GOM stock | NL | NC | Unable to determine |
| Cuvier's beaked whale (Ziphius cavirostris) | Pelagic | 74 (36) - Northern GOM stock | NL | NC | Unable to determine |
| *Mesoplodon* beaked whale (includes Blainville's beaked whale [M. densirostris], Gervais' beaked whale [M. europaeus], and Sowerby's beaked whale [M. bidens] | Pelagic | 149 (77) - Northern GOM stock | NL | NC | Unable to determine |
| Killer whale (Orcinus orca) | Pelagic, shelf, coastal | 28 (14) – Northern GOM stock | NL | NC | Unable to determine |
| Short-finned pilot whale (Globicephala macrorhynchus) | Pelagic, shelf coastal | 2,415 (1,456) - Northern GOM stock | NL | NC | Unable to determine |
| False killer whale (Pseudorca crassidens) | Pelagic | NA – Northern GOM stock | NL | NC | Unable to determine |

| | | | | | |
|---|---|---|---|---|---|
| Melon-headed whale (Peponocephala electra) | Pelagic | 2,235 (1,274) – Northern GOM stock | NL | NC | Unable to determine |
| Pygmy killer whale (Feresa attenuata) | Pelagic | 152 (75) – Northern GOM stock | NL | NC | Unable to determine |
| Risso's dolphin (Grampus griseus) | Deep water, seamounts | 2,442 (1,563) - Northern GOM stock | NL | NC | Unable to determine |
| Bottlenose dolphin (Tursiops truncatus) | Offshore, inshore, coastal, estuaries | NA (NA) - 32 Northern GOM Bay, Sound and Estuary stocks<br>NA (NA) - Northern GOM continental shelf stock<br>7,702 (6,551) - GOM eastern coastal stock<br>2,473 (2,004) - GOM northern coastal stock<br>NA (NA) – GOM western coastal stock<br>5,806 (4,230) – Northern GOM oceanic stock | NL | NC<br>S - 32 stocks inhabitiing the bays, sounds, and estuaries along GOM coast, and GOM western coastal stock | Unable to determine |
| Rough-toothed dolphin (Steno bredanensis) | Pelagic | 624 (311) – Northern GOM stock | NL | NC | Unable to determine |
| Fraser's dolphin (Lagenodelphis hosei) | Pelagic | NA (NA) – Northern GOM stock | NL | NC | Unable to determine |
| Striped dolphin (Stenella coeruleoalba) | Pelagic | 1,849 (1,041) - Northern GOM stock | NL | NC | Unable to determine |
| Pantropical spotted dolphin (Stenella attenuata) | Pelagic | 50,880 (40,699) - Northern GOM stock | NL | NC | Unable to determine |
| Atlantic spotted dolphin (Stenella frontalis) | Coastal and pelagic | NA (NA) - Northern GOM stock | NL | NC | Unable to determine |
| Spinner dolphin (Stenella longirostris) | Mostly pelagic | 11,441 (6,221) - Northern GOM stock | NL | NC | Unable to determine |
| Clymene dolphin (Stenella clymene) | Pelagic | 129 (64) - Northern GOM stock | NL | NC | Unable to determine |
| Sirenians | | | | | |
| West Indian (Florida) manatee (Trichechus manatus latrostris) | Coastal, rivers, and estuaries | 3,802 - U.S. stock | EN | D | Increasing or stable throughout much of Florida |

NA = Not available or not assessed.
[1] U.S. Endangered Species Act: EN = Endangered, T = Threatened, DL = Delisted, NL = Not listed.
[2] U.S. Marine Mammal Protection Act: D = Depleted, S = Strategic, NC = Not Classified.
[3] NMFS Draft 2012 Stock Assessment Reports.
[4] USFWS Stock Assessment Reports.

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The information contained herein relies heavily on the data gathered in the Marine Resource Assessments (MRAs). The Navy Marine Resources Assessment (MRA) program was implemented by the Commander, United States Fleet Forces Command, to collect data and information on the

protected and commercial marine resources found in the Navy OPAREAs. Specifically, the goal of the MRA program is to describe and document the marine resources present in each of the Navy's OPAREAs. As such, an MRA was finalized in 2007 for the GOM, which comprises three adjacent OPAREAs, one of which is the Panama City OPAREA (DON, 2007a).

The MRA represents a compilation and synthesis of available scientific literature (e.g., journals, periodicals, theses, dissertations, project reports, and other technical reports published by government agencies, private businesses, or consulting firms) and NMFS reports, including stock assessment reports (SARs), recovery plans, and survey reports. The MRA summarize the physical environment (e.g., marine geology, circulation and currents, hydrography, and plankton and primary productivity) for each test area. In addition, an in-depth discussion of the biological environment (marine mammals, sea turtles, fish, and EFH), as well as fishing grounds (recreational and commercial) and other areas of interest (e.g., maritime boundaries, navigable waters, marine managed areas, recreational diving sites) are also provided. Where applicable, the information contained in the MRA was used for analyses in this document. Appendix A of the Navy's IHA application contains more information about each marine mammal species potentially found in the Q–20 study area. The GOM MRA also contains detailed information, with a species description, status, habitat preference, distribution, behavior and life history, as well as information on its acoustics and hearing ability (DON, 2007a). A detailed description of marine mammal density estimates and their distribution in the Q–20 study area is provided in the Navy's Q–20 IHA application.

**Potential Effects on Marine Mammal**

The Navy considers that the planned Q–20 sonar testing activities in the Q–20 study area could potentially result in harassment to marine mammals. Although surface operations related to sonar testing involve ship movement in the vicinity of the Q–20 test area, NMFS considers it unlikely that ship strike could occur as analyzed below.

*Surface Operations*

Typical operations occurring at the surface include the deployment or towing of mine countermeasures (MCM) equipment, retrieval of equipment, and clearing and monitoring for non-participating vessels. As such, the potential exists for a ship to strike a marine mammal while conducting surface operations. In an effort to reduce the likelihood of a vessel strike, the mitigation and monitoring measures discussed below would be implemented.

Collisions with commercial and U.S. Navy vessels can cause major wounds and may occasionally cause fatalities to marine mammals. The most vulnerable marine mammals are those that spend extended periods of time at the surface in order to restore oxygen levels within their tissues after deep dives (e.g., the sperm whale). Laist *et al.* (2001) identified 11 species known to be hit by ships worldwide. Of these species, fin whales are struck most frequently; followed by right whales, humpback whales, sperm whales, and gray whales. More specifically, from 1975 through 1996, there were 31 dead whale strandings involving four large whales along the GOM coastline. Stranded animals included two sei whales, four minke whales, eight Bryde's whales, and 17 sperm whales. Only one of the stranded animals, a sperm whale with propeller wounds found in Louisiana on March 9, 1990, was identified as stranding as a result of a possible ship strike (Laist *et al.,* 2001). In addition, from 1999 through 2003, there was only one stranding involving a false killer whale in the northern GOM (Alabama, 1999) (Waring *et al.,* 2006). According to the 2010 Stock Assessment Report (NMFS, 2011), during 2009 there was one known Bryde's whale mortality as a result of a ship strike. Otherwise, no other marine mammal that is likely to occur in the northern GOM has been reported as either seriously or fatally injured as a result of a ship strike from 1999 through 2009 (Waring *et al.,* 2007).

It is unlikely that activities in non-territorial waters will result in a ship strike because of the nature of the operations and size of the vessels. For example, the hours of surface operations take into consideration operation times for multiple vessels during each test event. These vessels range in size from small Rigid Hull Inflatable Boat (RHIB) to surface vessels of approximately 128 m (420 ft). The majority of these vessels are small RHIBs and medium-sized vessels. A large proportion of the timeframe for the Q–20 test events include periods when ships remain stationary within the test site.

The greatest time spent in transit for tests includes navigation to and from the sites. At these times, the Navy follows standard operating procedures (SOPs). The captain and other crew members keep watch during ship transits to avoid objects in the water. Furthermore, with the implementation of the mitigation and monitoring measures described below, NMFS believes that it is unlikely vessel strikes would occur. Consequently, because of the nature of the surface operations and the size of the vessels, the mitigation and monitoring measures developed to minimize or avoid impacts of noise, and the fact that cetaceans typically more vulnerable to ship strikes are not likely to be in the project area, the NMFS concludes that ship strikes are unlikely to occur in the Q–20 study area.

*Acoustic Effects: Exposure to Sonar*

For activities involving active tactical sonar, NMFS's analysis will identify the probability of lethal responses, physical trauma, sensory impairment (permanent and temporary threshold shifts and acoustic masking), physiological responses (particular stress responses), behavioral disturbance (that rises to the level of harassment), and social responses that would be classified as behavioral harassment or injury and/or would be likely to adversely affect the species or stock through effects on annual rates of recruitment or survival. In this section, we will focus qualitatively on the different ways that exposure to sonar signals may affect marine mammals. Then, in the ''Estimated Take of Marine Mammals'' section, NMFS will relate the potential effects on marine mammals from sonar exposure to the MMPA regulatory definitions of Level A and Level B harassment and attempt to quantify those effects.

*Direct Physiological Effects*

Based on the literature, there are two basic ways that Navy sonar might directly result in physical trauma or damage: Noise-induced loss of hearing sensitivity (more commonly-called ''threshold shift'') and acoustically mediated bubble growth. Separately, an animal's behavioral reaction to an acoustic exposure might lead to physiological effects that might ultimately lead to injury or death, which is discussed later in the Stranding section.

*Threshold Shift (Noise-Induced Loss of Hearing)*

When animals exhibit reduced hearing sensitivity (i.e., sounds must be louder for an animal to recognize them) following exposure to a sufficiently intense sound, it is referred to as a noise-induced threshold shift (TS). An animal can experience temporary threshold shift (TTS) or permanent threshold shift (PTS). TTS can last from minutes or hours to days (i.e., there is recovery), occurs in specific frequency

ranges (e.g., an animal might only have a temporary loss of hearing sensitivity between the frequencies of 1 and 10 kHz)), and can be of varying amounts (for example, an animal's hearing sensitivity might be reduced by only 6 dB or reduced by 30 dB). PTS is permanent (i.e., there is no recovery), but also occurs in a specific frequency range and amount as mentioned in the TTS description.

The following physiological mechanisms are thought to play a role in inducing auditory TSs: Effects on sensory hair cells in the inner ear that reduce their sensitivity, modification of the chemical environment within the sensory cells, residual muscular activity in the middle ear, displacement of certain inner ear membranes, increased blood flow, and post-stimulatory reduction in both efferent and sensory neural output (Southall *et al.,* 2007). The amplitude, duration, frequency, temporal pattern, and energy distribution of sound exposure all affect the amount of associated TS and the frequency range in which it occurs. As amplitude and duration of sound exposure increase, so, generally, does the amount of TS. For continuous sounds, exposures of equal energy (the same SEL) will lead to approximately equal effects. For intermittent sounds, less TS will occur than from a continuous exposure with the same energy (some recovery will occur between exposures) (Kryter *et al.,* 1966; Ward, 1997). For example, one short but loud (higher SPL) sound exposure may induce the same impairment as one longer but softer sound, which in turn may cause more impairment than a series of several intermittent softer sounds with the same total energy (Ward, 1997). Additionally, though TTS is temporary, very prolonged exposure to sound strong enough to elicit TTS, or shorter-term exposure to sound levels well above the TTS threshold, can cause PTS, at least in terrestrial mammals (Kryter, 1985) (although in the case of Navy sonar, animals are not expected to be exposed to levels high enough or durations long enough to result in PTS).

PTS is considered auditory injury (Southall *et al.,* 2007). Irreparable damage to the inner or outer cochlear hair cells may cause PTS, however, other mechanisms are also involved, such as exceeding the elastic limits of certain tissues and membranes in the middle and inner ears and resultant changes in the chemical composition of the inner ear fluids (Southall *et al.,* 2007).

Although the published body of scientific literature contains numerous theoretical studies and discussion papers on hearing impairments that can occur with exposure to a loud sound, only a few studies provide empirical information on the levels at which noise-induced loss in hearing sensitivity occurs in nonhuman animals. For cetaceans, published data are limited to the captive bottlenose dolphin and beluga whale (Finneran *et al.,* 2000, 2002b, 2005a; Schlundt *et al.,* 2000; Nachtigall *et al.,* 2003, 2004).

Marine mammal hearing plays a critical role in communication with conspecifics, and interpreting environmental cues for purposes such as predator avoidance and prey capture. Depending on the frequency range of TTS degree (dB), duration, and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present.

Alternatively, a larger amount and longer duration of TTS sustained during a time when communication is critical for successful mother/calf interactions could have more serious impacts. Also, depending on the degree and frequency range, the effects of PTS on an animal could range in severity, although it is considered generally more serious because it is a long term condition. Of note, reduced hearing sensitivity as a simple function of development and aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.,* 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost. There is no empirical evidence that exposure to Navy sonar can cause PTS in any marine mammals; instead the probability of PTS has been inferred from studies of TTS (see Richardson *et al.,* 1995).

*Acoustically Mediated Bubble Growth*

One theoretical cause of injury to marine mammals is rectified diffusion (Crum and Mao, 1996), the process of increasing the size of a bubble by exposing it to a sound field. This process could be facilitated if the environment in which the ensonified bubbles exist is supersaturated with gas. Repetitive diving by marine mammals can cause the blood and some tissues to accumulate gas to a greater degree than is supported by the surrounding environmental pressure (Ridgway and Howard, 1979). The deeper and longer dives of some marine mammals (for example, beaked whales) are theoretically predicted to induce greater supersaturation (Houser *et al.,* 2001). If rectified diffusion were possible in marine mammals exposed to high-level sound, conditions of tissue supersaturation could theoretically speed the rate and increase the size of bubble growth. Subsequent effects due to tissue trauma and emboli would presumably mirror those observed in humans suffering from decompression sickness.

It is unlikely that the short duration of sonar pings would be long enough to drive bubble growth to any substantial size, if such a phenomenon occurs. Recent work conducted by Crum *et al.* (2005) demonstrated the possibility of rectified diffusion for short duration signals, but at sound exposure levels and tissue saturation levels that are improbable to occur in a diving marine mammal. However, an alternative but related hypothesis has also been suggested: Stable bubbles could be destabilized by high-level sound exposures such that bubble growth then occurs through static diffusion of gas out of the tissues. In such a scenario the marine mammal would need to be in a gas-supersaturated state for a long enough period of time for bubbles to become of a problematic size. Yet another hypothesis (decompression sickness) has speculated that rapid ascent to the surface following exposure to a startling sound might produce tissue gas saturation sufficient for the evolution of nitrogen bubbles (Jepson *et al.,* 2003; Fernandez *et al.,* 2005). In this scenario, the rate of ascent would need to be sufficiently rapid to compromise behavioral or physiological protections against nitrogen bubble formation. Collectively, these hypotheses can be referred to as ''hypotheses of acoustically mediated bubble growth.''

Although theoretical predictions suggest the possibility for acoustically mediated bubble growth, there is considerable disagreement among scientists as to its likelihood (Piantadosi and Thalmann, 2004; Evans and Miller, 2003). Crum and Mao (1996) hypothesized that received levels would have to exceed 190 dB in order for there to be the possibility of significant bubble growth due to supersaturation of gases in the blood (i.e., rectified diffusion). More recent work conducted by Crum *et al.* (2005) demonstrated the possibility of rectified diffusion for short duration signals, but at SELs and tissue saturation levels that are highly

improbable to occur in diving marine mammals. To date, Energy Levels (ELs) predicted to cause in vivo bubble formation within diving cetaceans have not been evaluated (NOAA, 2002). Although it has been argued that traumas from some recent beaked whale strandings are consistent with gas emboli and bubble-induced tissue separations (Jepson *et al.,* 2003), there is no conclusive evidence of this (Hooker *et al.,* 2011). However, Jepson *et al.* (2003, 2005) and Fernandez *et al.* (2004, 2005) concluded that in vivo bubble formation, which may be exacerbated by deep, long duration, repetitive dives may explain why beaked whales appear to be particularly vulnerable to sonar exposures. A recent review of evidence for gas-bubble incidence in marine mammal tissues suggest that diving mammals vary their physiological responses according to multiple stressors, and that the perspective on marine mammal diving physiology should change from simply minimizing nitrogen loading to management of the nitrogen load (Hooker *et al.,* 2011). This suggests several avenues for further study, ranging from the effects of gas bubbles at molecular, cellular and organ function levels, to comparative studies relating the presence/absence of gas bubbles to diving behavior. More information regarding hypotheses that attempt to explain how behavioral responses to Navy sonar can lead to strandings is included in the ''Behaviorally Mediated Bubble Growth'' section, after the summary of strandings.

*Acoustic Masking*

Marine mammals use acoustic signals for a variety of purposes, which differ among species, but include communication between individuals, navigation, foraging, reproduction, and learning about their environment (Erbe and Farmer, 2000; Tyack, 2000; Clark *et al.,* 2009). Masking, or auditory interference, generally occurs when sounds in the environment are louder than, and of a similar frequency to, auditory signals an animal is trying to receive. Masking is a phenomenon that affects animals that are trying to receive acoustic information about their environment, including sounds from other members of their species, predators, prey, and sounds that allow them to orient in their environment. Masking these acoustic signals can disturb the behavior of individual animals, groups of animals, or entire populations.

The extent of the masking interference depends on the spectral, temporal, and spatial relationships between the signals an animal is trying to receive and the masking noise, in addition to other factors. In humans, significant masking of tonal signals occurs as a result of exposure to noise in a narrow band of similar frequencies. As the sound level increases, though, the detection of frequencies above those of the masking stimulus also decreases. This principle is also expected to apply to marine mammals because of common biomechanical cochlear properties across taxa.

Richardson *et al.* (1995) argued that the maximum radius of influence of an industrial noise (including broadband low frequency sound transmission) on a marine mammal is the distance from the source to the point at which the noise can barely be heard. This range is determined by either the hearing sensitivity of the animal or the background noise level present. Industrial masking is most likely to affect some species' ability to detect communication calls and natural sounds (i.e., surf noise, prey noise, etc.; Richardson *et al.,* 1995).

The echolocation calls of odontocetes (toothed whales) are subject to masking by high frequency sound. Human data indicate low-frequency sound can mask high-frequency sounds (i.e., upward masking). Studies on captive odontocetes by Au *et al.* (1974, 1985, 1993) indicate that some species may use various processes to reduce masking effects (e.g., adjustments in echolocation call intensity or frequency as a function of background noise conditions). There is also evidence that the directional hearing abilities of odontocetes are useful in reducing masking at the high frequencies these cetaceans use to echolocate, but not at the low-to-moderate frequencies they use to communicate (Zaitseva *et al.,* 1980).

As mentioned previously, the functional hearing ranges of mysticetes (baleen whales) and odontocetes (toothed whales) all encompass the frequencies of the sonar sources used in the Navy's Q–20 test activities. Additionally, almost all species' vocal repertoires span across the frequencies of the sonar sources used by the Navy. The closer the characteristics of the masking signal to the signal of interest, the more likely masking is to occur. However, because the pulse length and duty cycle of the Navy sonar signals are of short duration and would not be continuous, masking is unlikely to occur as a result of exposure to these signals during the Q–20 test activities in the designated Q–20 study area.

*Impaired Communication*

In addition to making it more difficult for animals to perceive acoustic cues in their environment, anthropogenic sound presents separate challenges for animals that are vocalizing. When they vocalize, animals are aware of environmental conditions that affect the ''active space'' of their vocalizations, which is the maximum area within which their vocalizations can be detected before it drops to the level of ambient noise (Brenowitz, 2004; Brumm *et al.,* 2004; Lohr *et al.,* 2003). Animals are also aware of environmental conditions that affect whether listeners can discriminate and recognize their vocalizations from other sounds, which are more important than detecting a vocalization (Brenowitz, 1982; Brumm *et al.,* 2004; Dooling, 2004; Marten and Marler, 1977; Patricelli *et al.,* 2006). Most animals that vocalize have evolved an ability to make vocal adjustments to their vocalizations to increase the signal-to-noise ratio, active space, and recognizability of their vocalizations in the face of temporary changes in background noise (Brumm *et al.,* 2004; Patricelli *et al.,* 2006). Vocalizing animals will make one or more of the following adjustments to their vocalizations: Adjust the frequency structure; adjust the amplitude; adjust temporal structure; or adjust temporal delivery.

Many animals will combine several of these strategies to compensate for high levels of background noise. Anthropogenic sounds that reduce the signal-to-noise ratio of animal vocalizations, increase the masked auditory thresholds of animals listening for such vocalizations, or reduce the active space of an animal's vocalizations impair communication between animals. Most animals that vocalize have evolved strategies to compensate for the effects of short-term or temporary increases in background or ambient noise on their songs or calls. Although the fitness consequences of these vocal adjustments remain unknown, like most other trade-offs animals must make, some of these strategies probably come at a cost (Patricelli *et al.,* 2006). For example, vocalizing more loudly in noisy environments may have energetic costs that decrease the net benefits of vocal adjustment and alter a bird's energy budget (Brumm, 2004; Wood and Yezerinac, 2006). Shifting songs and calls to higher frequencies may also impose energetic costs (Lambrechts, 1996).

*Stress Responses*

Classic stress responses begin when an animal's central nervous system

perceives a potential threat to its homeostasis. That perception triggers stress responses regardless of whether a stimulus actually threatens the animal; the mere perception of a threat is sufficient to trigger a stress response (Moberg, 2000; Sapolsky *et al.,* 2005; Seyle, 1950). Once an animal's central nervous system perceives a threat, it mounts a biological response or defense that consists of a combination of the four general biological defense responses: behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune response.

In the case of many stressors, an animal's first and most economical (in terms of biotic costs) response is behavioral avoidance of the potential stressor or avoidance of continued exposure to a stressor. An animal's second line of defense to stressors involves the autonomic nervous system and the classical ''fight or flight'' response, which includes the cardiovascular system, the gastrointestinal system, the exocrine glands, and the adrenal medulla to produce changes in heart rate, blood pressure, and gastrointestinal activity that humans commonly associate with ''stress.'' These responses have a relatively short duration and may or may not have significant long-term effects on an animal's welfare.

An animal's third line of defense to stressors involves its neuroendocrine or sympathetic nervous systems; the system that has received the most study has been the hypothalmus-pituitary-adrenal system (also known as the HPA axis in mammals or the hypothalamus-pituitary-interrenal axis in fish and some reptiles). Unlike stress responses associated with the autonomic nervous system, virtually all neuro-endocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction (Moberg, 1987; Rivier, 1995) and altered metabolism (Elasser *et al.,* 2000), reduced immune competence (Blecha, 2000) and behavioral disturbance. Increases in the circulation of glucocorticosteroids (cortisol, corticosterone, and aldosterone in marine mammals; Romano *et al.,* 2004) have been equated with stress for many years.

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and distress is the biotic cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose a risk to the animal's welfare. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other biotic functions, which impair those functions that experience the diversion. For example, when mounting a stress response diverts energy away from growth in young animals, those animals may experience stunted growth. When mounting a stress response diverts energy from a fetus, an animal's reproductive success and its fitness will suffer. In these cases, the animals will have entered a pre-pathological or pathological state which is called ''distress'' (sensu Seyle, 1950) or ''allostatic loading'' (sensu McEwen and Wingfield, 2003). This pathological state will last until the animal replenishes its biotic reserves sufficient to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses have also been documented fairly well through controlled experiments; because this physiology exists in every vertebrate that has been studied, it is not surprising that stress responses and their costs have been documented in both laboratory and free-living animals (for examples see, Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005; Reneerkens *et al.,* 2002; Thompson and Hamer, 2000). Although no information has been collected on the physiological responses of marine mammals to exposure to anthropogenic sounds, studies of other marine animals and terrestrial animals would lead us to expect some marine mammals to experience physiological stress responses and, perhaps, physiological responses that would be classified as ''distress'' upon exposure to mid-frequency and low-frequency sounds.

For example, Jansen (1998) reported on the relationship between acoustic exposures and physiological responses that are indicative of stress responses in humans (for example, elevated respiration and increased heart rates). Jones (1998) reported on reductions in human performance when faced with acute, repetitive exposures to acoustic disturbance. Trimper *et al.* (1998) reported on the physiological stress responses of osprey to low-level aircraft noise while Krausman *et al.* (2004) reported on the auditory and physiology stress responses of endangered Sonoran pronghorn to military overflights. Smith *et al.* (2004a, 2004b) identified noise induced physiological transient stress responses in hearing-specialist fish that accompanied short- and long-term hearing losses. Welch and Welch (1970) reported physiological and behavioral stress responses that accompanied damage to the inner ears of fish and several mammals.

Hearing is one of the primary senses cetaceans use to gather information about their environment and to communicate with conspecifics. Although empirical information on the relationship between sensory impairment (TTS, PTS, and acoustic masking) on cetaceans remains limited, it seems reasonable to assume that reducing an animal's ability to gather information about its environment and to communicate with other members of its species would be stressful for animals that use hearing as their primary sensory mechanism. Therefore, we assume that acoustic exposures sufficient to trigger onset PTS or TTS would be accompanied by physiological stress responses because terrestrial animals exhibit those responses under similar conditions (NRC, 2003). More importantly, marine mammals might experience stress responses at received levels lower than those necessary to trigger onset TTS. Based on empirical studies of the time required to recover from stress responses (Moberg, 2000), we also assume that stress responses are likely to persist beyond the time interval required for animals to recover from TTS and might result in pathological and pre-pathological states that would be as significant as behavioral responses to TTS.

*Behavioral Disturbance*

Behavioral responses to sound are highly variable and context-specific. Exposure of marine mammals to sound sources can result in (but is not limited to) the following observable responses: increased alertness; orientation or attraction to a sound source; vocal modifications; cessation of feeding; cessation of social interaction; alteration of movement or diving behavior; habitat abandonment (temporary or permanent); and, in severe cases, panic, flight, stampede, or stranding, potentially resulting in death (Southall *et al.,* 2007).

Many different variables can influence an animal's perception of and response to (nature and magnitude) an acoustic event. An animal's prior experience with a sound type affects whether it is less likely (habituation) or more likely (sensitization) to respond to certain sounds in the future (animals can also be innately pre-disposed to

respond to certain sounds in certain ways) (Southall *et al.,* 2007). Related to the sound itself, the perceived nearness of the sound, bearing of the sound (approaching vs. retreating), similarity of a sound to biologically relevant sounds in the animal's environment (i.e., calls of predators, prey, or conspecifics), and familiarity of the sound may affect the way an animal responds to the sound (Southall *et al.,* 2007). Individuals (of different age, gender, reproductive status, etc.) among most populations will have variable hearing capabilities, and differing behavioral sensitivities to sounds that will be affected by prior conditioning, experience, and current activities of those individuals. Often, specific acoustic features of the sound and contextual variables (i.e., proximity, duration, or recurrence of the sound or the current behavior that the marine mammal is engaged in or its prior experience), as well as entirely separate factors such as the physical presence of a nearby vessel, may be more relevant to the animal's response than the received level alone.

There are only few empirical studies of behavioral responses of free-living cetaceans to military sonar being conducted to date, due to the difficulties in implementing experimental protocols on wild marine mammals.

An opportunistic observation was made on a tagged Blainville's beaked whale (*Mesoplodon densirostris*) before, during, and after a multi-day naval exercises involving tactical mid-frequency sonars within the U.S. Navy's sonar testing range at the Atlantic Undersea Test and Evaluation Center (AUTEC), in the Tongue of the Ocean near Andros Island in the Bahamas (Tyack *et al.,* 2011). The adult male whale was tagged with a satellite transmitter tag on May 7, 2009. During the 72 hrs before the sonar exercise started, the mean distance from whale to the center of the AUTEC range was approximately 37 km. During the 72 hrs sonar exercise, the whale moved several tens of km farther away (mean distance approximately 54 km). The received sound levels at the tagged whale during sonar exposure were estimated to be 146 dB re 1 μPa at the highest level. The tagged whale slowly returned for several days after the exercise stopped (mean distance approximately 29 km) from 0 to 72 hours after the exercise stopped (Tyack *et al.,* 2011).

In the past several years, controlled exposure experiments (CEE) on marine mammal behavioral responses to military sonar signals using acoustic tags have been started in the Bahamas, the Mediterranean Sea, southern California, and Norway. These behavioral response studies (BRS), though still in their early stages, have provided some preliminary insights into cetacean behavioral disturbances when exposed to simulated and actual military sonar signals.

In 2007 and 2008, two Blainville's beaked whales were tagged in the AUTEC range and exposed to simulated mid-frequency sonar signals, killer whale (*Orcinus orca*) recordings (in 2007), and pseudo-random noise (PRN, in 2008) (Tyack *et al.,* 2011). For the simulated mid-frequency exposure BRS, the tagged whale stopped clicking during its foraging dive after 9 minutes when the received level reached 138 dB SPL, or a cumulative SEL value of 142 dB re 1 $\mu Pa^2$-s. Once the whale stopped clicking, it ascended slowly, moving away from the sound source. The whale surfaced and remained in the area for approximately 2 hours before making another foraging dive (Tyack *et al.,* 2011).

The same beaked whale was exposed to killer whale sound recording during its subsequent deep foraging dive. The whale stopped clicking about 1 minute after the received level of the killer whale sound reached 98 dB SPL, just above the ambient noise level at the whale. The whale then made a long and slow ascent. After surfacing, the whale continued to swim away from the playback location for 10 hours (Tyack *et al.,* 2011).

In 2008, a Blainville's beaked was tagged and exposed with PRN that has the same frequency band as the simulated mid-frequency sonar signal. The received level at the whale ranged from inaudible to 142 dB SPL (144 dB cumulative SEL). The whale stopped clicking less than 2 minutes after exposure to the last transmission and ascended slowly to approximately 600 m. The whale appeared to stop at this depth, at which time the tag unexpectedly released from the whale (Tyack *et al.,* 2011).

During CEEs of the BRS off Norway, social behavioral responses of pilot whales and killer whales to tagging and sonar exposure were investigated. Sonar exposure was sampled for 3 pilot whale (*Globicephala* spp.) groups and 1 group of killer whales. Results show that when exposed to sonar signals, pilot whales showed a preference for larger groups with medium-low surfacing synchrony, while starting logging, spyhopping and milling. While killer whales showed the opposite pattern, maintaining asynchronous patterns of surface behavior: decreased surfacing synchrony, increased spacing, decreased group size, tailslaps and loggings (Visser *et al.,* 2011).

Although the small sample size of these CEEs reported here is too small to make firm conclusions about differential responses of cetaceans to military sonar exposure, none of the results showed that whales responded to sonar signals with panicked flight. Instead, the beaked whales exposed to simulated sonar signals and killer whale sound recording moved in a well oriented direction away from the source towards the deep water exit from the Tongue of the Ocean (Tyack *et al.,* 2011). In addition, different species of cetaceans exhibited different social behavioral responses towards (close) vessel presence and sonar signals, which elicit different, potentially tailored and species-specific responses (Visser *et al.,* 2011).

Much more qualitative information is available on the avoidance responses of free-living cetaceans to other acoustic sources, like seismic airguns and low-frequency active sonar, than mid-frequency active sonar. Richardson *et al.,* (1995) noted that avoidance reactions are the most obvious manifestations of disturbance in marine mammals.

*Behavioral Responses*

Southall *et al.,* (2007) reports the results of the efforts of a panel of experts in acoustic research from behavioral, physiological, and physical disciplines that convened and reviewed the available literature on marine mammal hearing and physiological and behavioral responses to man-made sound with the goal of proposing exposure criteria for certain effects. This compilation of literature is very valuable, though Southall *et al.* note that not all data is equal, some have poor statistical power, insufficient controls, and/or limited information on received levels, background noise, and other potentially important contextual variables—such data were reviewed and sometimes used for qualitative illustration, but were not included in the quantitative analysis for the criteria recommendations.

In the Southall *et al.,* (2007) report, for the purposes of analyzing responses of marine mammals to anthropogenic sound and developing criteria, the authors differentiate between single pulse sounds, multiple pulse sounds, and non-pulse sounds. HFAS/MFAS sonar is considered a non-pulse sound. Southall *et al.,* (2007) summarize the reports associated with low-, mid-, and high-frequency cetacean responses to non-pulse sounds (there are no pinnipeds in the Gulf of Mexico [GOM])

in Appendix C of their report (incorporated by reference and summarized in the three paragraphs below).

The reports that address responses of low-frequency cetaceans to non-pulse sounds include data gathered in the field and related to several types of sound sources (of varying similarity to HFAS/MFAS) including: Vessel noise, drilling and machinery playback, low frequency M-sequences (sine wave with multiple phase reversals) playback, low frequency active sonar playback, drill vessels, Acoustic Thermometry of Ocean Climate (ATOC) source, and non-pulse playbacks. These reports generally indicate no (or very limited) responses to received levels in the 90 to 120 dB re 1 μPa range and an increasing likelihood of avoidance and other behavioral effects in the 120 to 160 dB range. As mentioned earlier, however, contextual variables play a very important role in the reported responses and the severity of effects are not linear when compared to received level. Also, few of the laboratory or field datasets had common conditions, behavioral contexts or sound sources, so it is not surprising that responses differ.

The reports that address responses of mid-frequency cetaceans to non-pulse sounds include data gathered both in the field and the laboratory and related to several different sound sources (of varying similarity to HFAS/MFAS) including: Pingers, drilling playbacks, vessel and ice-breaking noise, vessel noise, Acoustic Harassment Devices (AHDs), Acoustic Deterrent Devices (ADDs), HFAS/MFAS, and non-pulse bands and tones. Southall *et al.* were unable to come to a clear conclusion regarding these reports. In some cases, animals in the field showed significant responses to received levels between 90 and 120 dB, while in other cases these responses were not seen in the 120 to 150 dB range. The disparity in results was likely due to contextual variation and the differences between the results in the field and laboratory data (animals responded at lower levels in the field).

The reports that address the responses of high-frequency cetaceans to non-pulse sounds include data gathered both in the field and the laboratory and related to several different sound sources (of varying similarity to HFAS/MFAS) including: acoustic harassment devices, Acoustical Telemetry of Ocean Climate (ATOC), wind turbine, vessel noise, and construction noise. However, no conclusive results are available from these reports. In some cases, high frequency cetaceans (harbor porpoises) are observed to be quite sensitive to a wide range of human sounds at very low exposure RLs (90 to 120 dB). All recorded exposures exceeding 140 dB produced profound and sustained avoidance behavior in wild harbor porpoises (Southall *et al.,* 2007).

In addition to summarizing the available data, the authors of Southall *et al.* (2007) developed a severity scaling system with the intent of ultimately being able to assign some level of biological significance to a response. Following is a summary of their scoring system, a comprehensive list of the behaviors associated with each score may be found in the report:

- 0–3 (Minor and/or brief behaviors) includes, but is not limited to: No response; minor changes in speed or locomotion (but with no avoidance); individual alert behavior; minor cessation in vocal behavior; minor changes in response to trained behaviors (in laboratory).
- 4–6 (Behaviors with higher potential to affect foraging, reproduction, or survival) includes, but is not limited to: Moderate changes in speed, direction, or dive profile; brief shift in group distribution; prolonged cessation or modification of vocal behavior (duration > duration of sound); minor or moderate individual and/or group avoidance of sound; brief cessation of reproductive behavior; or refusal to initiate trained tasks (in laboratory).
- 7–9 (Behaviors considered likely to affect the aforementioned vital rates) includes, but are not limited to: Extensive of prolonged aggressive behavior; moderate, prolonged or significant separation of females and dependent offspring with disruption of acoustic reunion mechanisms; long-term avoidance of an area; outright panic, stampede, stranding; threatening or attacking sound source (in laboratory).

In Table 2 NMFS has summarized the scores that Southall *et al.* (2007) assigned to the papers that reported behavioral responses of low-frequency cetaceans, mid-frequency cetaceans, and high-frequency cetaceans to non-pulse sounds.

Table 2. Data compiled from three tables from Southall *et al.* (2007) indicating when marine mammals (low-frequency cetacean = L, mid-frequency cetacean = M, and high-frequency cetacean = H) were reported as having a behavioral response of the indicated severity to a non-pulse sound of the indicated received level. As discussed in the text, responses are highly variable and context specific.

RECEIVED RMS SOUND PRESSURE LEVEL

(dB re 1 microPa)

| | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 9 | | | | | | | | | | | | |
| 8 | | M | M | | M | | M | | | | M | M |
| 7 | | | | | | L | L | | | | | |
| 6 | H | L/H | L/H | L/M/H | L/M/H | L | L/H | H | M/H | M | | |
| 5 | | | | | M | | | | | | | |
| 4 | | | H | L/M/H | L/M | | L | | | | | |
| 3 | | M | L/M | L/M | M | | | | | | | |
| 2 | | | L | L/M | L | L | L | | | | | |
| 1 | | | M | M | M | | | | | | | |
| 0 | L/H | L/H | L/M/H | L/M/H | L/M/H | L | M | | | | M | M |

*Potential Effects of Behavioral Disturbance*

The different ways that marine mammals respond to sound are sometimes indicators of the ultimate effect that exposure to a given stimulus will have on the well-being (survival, reproduction, etc.) of an animal. There is little marine mammal data quantitatively relating the exposure of marine mammals to sound to effects on reproduction or survival, though data exists for terrestrial species to which we can draw comparisons for marine mammals.

Attention is the cognitive process of selectively concentrating on one aspect of an animal's environment while ignoring other things (Posner, 1994). Because animals (including humans) have limited cognitive resources, there is a limit to how much sensory information they can process at any

time. The phenomenon called ''attentional capture'' occurs when a stimulus (usually a stimulus that an animal is not concentrating on or attending to) ''captures'' an animal's attention. This shift in attention can occur consciously or unconsciously (for example, when an animal hears sounds that it associates with the approach of a predator) and the shift in attention can be sudden (Dukas, 2002; van Rij, 2007). Once a stimulus has captured an animal's attention, the animal can respond by ignoring the stimulus, assuming a ''watch and wait'' posture, or treat the stimulus as a disturbance and respond accordingly, which includes scanning for the source of the stimulus or ''vigilance'' (Cowlishaw *et al.,* 2004).

Vigilance is normally an adaptive behavior that helps animals determine the presence or absence of predators, assess their distance from conspecifics, or to attend cues from prey (Bednekoff and Lima, 1998; Treves, 2000). Despite those benefits, however, vigilance has a cost of time: when animals focus their attention on specific environmental cues, they are not attending to other activities such a foraging. These costs have been documented best in foraging animals, where vigilance has been shown to substantially reduce feeding rates (Saino, 1994; Beauchamp and Livoreil, 1997; Fritz *et al.,* 2002).

Animals will spend more time being vigilant, which may translate to less time foraging or resting, when disturbance stimuli approach them more directly, remain at closer distances, have a greater group size (for example, multiple surface vessels), or when they co-occur with times that an animal perceives increased risk (for example, when they are giving birth or accompanied by a calf). Most of the published literature, however, suggests that direct approaches will increase the amount of time animals will dedicate to being vigilant. For example, bighorn sheep and Dall's sheep dedicated more time being vigilant, and less time resting or foraging, when aircraft made direct approaches over them (Frid, 2001; Stockwell *et al.,* 1991).

Several authors have established that long-term and intense disturbance stimuli can cause population declines by reducing the body condition of individuals that have been disturbed, followed by reduced reproductive success, reduced survival, or both (Daan *et al.,* 1996; Madsen, 1994; White, 1983). For example, Madsen (1994) reported that pink-footed geese (*Anser brachyrhynchus*) in undisturbed habitat gained body mass and had about a 46-percent reproductive success compared with geese in disturbed habitat (being consistently scared off the fields on which they were foraging), which did not gain mass and had a 17 percent reproductive success. Similar reductions in reproductive success have been reported for mule deer (*Odocoileus hemionus*) disturbed by all-terrain vehicles (Yarmoloy *et al.,* 1988), caribou disturbed by seismic exploration blasts (Bradshaw *et al.,* 1998), caribou disturbed by low-elevation military jetfights (Luick *et al.,* 1996), and caribou disturbed by low-elevation jet flights (Harrington and Veitch, 1992). Similarly, a study of elk (*Cervus elaphus*) that were disturbed experimentally by pedestrians concluded that the ratio of young to mothers was inversely related to disturbance rate (Phillips and Alldredge, 2000).

The primary mechanism by which increased vigilance and disturbance appear to affect the fitness of individual animals is by disrupting an animal's time budget and, as a result, reducing the time they might spend foraging and resting (which increases an animal's activity rate and energy demand). For example, a study of grizzly bears (*Ursus horribilis*) reported that bears disturbed by hikers reduced their energy intake by an average of 12 kcal/min (50.2 × 103kJ/min), and spent energy fleeing or acting aggressively toward hikers (White *et al.,* 1999).

On a related note, many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hr cycle). Substantive behavioral reactions to noise exposure (such as disruption of critical life functions, displacement, or avoidance of important habitat) are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.,* 2007).

*Stranding and Mortality*

When a live or dead marine mammal swims or floats onto shore and becomes ''beached'' or incapable of returning to sea, the event is termed a ''stranding'' (Geraci *et al.,* 1999; Perrin and Geraci, 2002; Geraci and Lounsbury, 2005; NMFS, 2007). Marine mammals are known to strand for a variety of reasons, such as infectious agents, biotoxicosis, starvation, fishery interaction, ship strike, unusual oceanographic or weather events, sound exposure, or combinations of these stressors sustained concurrently or in series. However, the cause or causes of most stranding are unknown (Geraci *et al.,* 1976; Eaton, 1979, Odell *et al.,* 1980; Best, 1982).

Several sources have published lists of mass stranding events of cetaceans during attempts to identify relationships between those stranding events and military sonar (Hildebrand, 2004; IWC, 2005; Taylor *et al.,* 2004). For example, based on a review of stranding records between 1960 and 1995, the International Whaling Commission (IWC, 2005) identified 10 mass stranding events of Cuvier's beaked whales that had been reported and one mass stranding of four Baird's beaked whales (*Berardius bairdii*). The IWC concluded that, out of eight stranding events reported from the mid-1980s to the summer of 2003, seven had been associated with the use of mid-frequency sonar, one of those seven had been associated with the use of low frequency sonar, and the remaining stranding event had been associated with the use of seismic airguns. None of the strandings has been associated with high frequency sonar such as the Q–20 sonar planned to be tested in this action. Therefore, NMFS does not consider it likely that the Q–20 testing activity would cause marine mammals to strand.

**Anticipated Effects on Marine Mammal Habitat**

There are no areas within the NSWC PCD that are specifically considered as important physical habitat for marine mammals. The prey of marine mammals are considered part of their habitat. The Navy's Final Environmental Impact Statement and Overseas Environmental Impact Statement (FEIS) on the research, development, test and evaluation activities in the NSWC PCD study area contains a detailed discussion of the potential effects to fish from HFAS/MFAS. These effects are the same as expected from the Q–20 sonar testing activities within the same area.

The extent of data, and particularly scientifically peer-reviewed data, on the effects of high intensity sounds on fish is limited. In considering the available literature, the vast majority of fish species studied to date are hearing generalists and cannot hear sounds above 500 to 1,500 Hz (depending upon the species), and, therefore, behavioral effects on these species from higher frequency sounds are not likely. Moreover, even those fish species that may hear above 1.5 kHz, such as a few sciaenids and the clupeids (and relatives), have relatively poor hearing above 1.5 kHz as compared to their hearing sensitivity at lower frequencies.

Therefore, even among the species that have hearing ranges that overlap with some mid- and high frequency sounds, it is likely that the fish will only actually hear the sounds if the fish and source are very close to one another. Finally, since the vast majority of sounds that are of biological relevance to fish are below 1 kHz (e.g., Zelick *et al.,* 1999; Ladich and Popper, 2004), even if a fish detects a mid-or high frequency sound, these sounds will not mask detection of lower frequency biologically relevant sounds. Based on the above information, there will likely be few, if any, behavioral impacts on fish.

Alternatively, it is possible that very intense mid- and high frequency signals could have a physical impact on fish, resulting in damage to the swim bladder and other organ systems. However, even these kinds of effects have only been shown in a few cases in response to explosives, and only when the fish has been very close to the source. Such effects have never been indicated in response to any Navy sonar. Moreover, at greater distances (the distance clearly would depend on the intensity of the signal from the source) there appears to be little or no impact on fish, and particularly no impact on fish that do not have a swim bladder or other air bubble that would be affected by rapid pressure changes.

**Mitigation**

In order to issue an Incidental Take Authorization (ITA) under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and the availability of such species for taking for certain subsistence uses. The National Defense Authorization Act (NDAA) of 2004 amended the MMPA as it relates to military-readiness activities and the ITA process such that ''least practicable adverse impact'' shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the ''military readiness activity.'' The Q–20 sonar testing activities described in the Navy's IHA application are considered military readiness activities.

For the Q–20 sonar testing activities in the GOM, NMFS worked with the Navy to develop mitigation measures. The Navy then plan to implement the following mitigation measures, which include a careful balancing of minimizing impacts to marine mammals with the likely effect of that measure on personnel safety, practicality of implementation, and impact on the ''military-readiness activity.''

*Protective Measures Related to Surface Operations*

Visual surveys will be conducted for all test operations to reduce the potential for vessel collisions to occur with a protected species. If necessary, the ship's course and speed will be adjusted.

*Personnel Training*

Marine mammal mitigation training for those who participate in the active sonar activities is a key element of the protective measures. The goal of this training is for key personnel onboard Navy platforms in the Q–20 study area to understand the protective measures and be competent to carry them out. The Marine Species Awareness Training (MSAT) is provided to all applicable participants, where appropriate. The program addresses environmental protection, laws governing the protection of marine species, Navy stewardship, and general observation information including more detailed information for spotting marine mammals. Marine mammal observer training will be provided before active sonar testing begins.

Marine observers would be aware of the specific actions to be taken based on the RDT&E platform if a marine mammal is observed. Specifically, the following requirements for personnel training would apply:

- All marine mammal observers onboard platforms involved in the Q–20 sonar test activities will review the NMFS-approved MSAT material prior to use of active sonar.
- Marine mammal observers shall be trained in marine mammal recognition. Marine mammal observer training shall include completion of the MSAT, instruction on governing laws and policies, and overview of the specific Gulf of Mexico species present, and observer roles and responsibilities.
- Marine mammal observers will be trained in the most effective means to ensure quick and effective communication within the command structure in order to facilitate implementation of mitigation measures if marine species are spotted.

*Range Operating Procedures*

The following procedures would be implemented to maximize the ability of Navy personnel to recognize instances when marine mammals are in the vicinity.

1. Marine Mammal Observer Responsibilities

- Marine mammal observers will have at least one set of binoculars available for each person to aid in the detection of marine mammals.
- Marine mammal observers shall conduct monitoring for approximately 15 minutes prior to the initiation of and for approximately 15 minutes after the cessation of Q–20 testing activities.
- Marine mammal observers will scan the water from the ship to the horizon and be responsible for all observations in their sector. In searching the assigned sector, the lookout will always start at the forward part of the sector and search aft (toward the back). To search and scan, the lookout will hold the binoculars steady so the horizon is in the top third of the field of vision and direct the eyes just below the horizon. The lookout will scan for approximately five seconds in as many small steps as possible across the field seen through the binoculars. They will search the entire sector in approximately five-degree steps, pausing between steps for approximately five seconds to scan the field of view. At the end of the sector search, the glasses will be lowered to allow the eyes to rest for a few seconds, and then the lookout will search back across the sector with the naked eye.
- Marine mammal observers will be responsible for informing the Test Director of any marine mammal that may need to be avoided, as warranted.
- These procedures would apply as much as possible during RMMV operations. When an RMMV is operating over the horizon, it is impossible to follow and observe it during the entire path. An observer will be located on the support vessel or platform to observe the area when the system is undergoing a small track close to the support platform.

2. Operating Procedures

- Test Directors will, as appropriate to the event, make use of marine species detection cues and information to limit interaction with marine species to the maximum extent possible, consistent with the safety of the ship.
- During Q–20 sonar activities, personnel will utilize all available sensor and optical system (such as night vision goggles) to aid in the detection of marine mammals.
- Navy aircraft participating will conduct and maintain, when operationally feasible, required, and safe, surveillance for marine species of concern as long as it does not violate safety constraints or interfere with the accomplishment of primary operational duties.

• Marine mammal detections by aircraft will be immediately reported to the Test Director. This action will occur when it is reasonable to conclude that the course of the ship will likely close the distance between the ship and the detected marine mammal.

• Exclusion Zones—The Navy will ensure that sonar transmissions are ceased if any detected marine mammals are within 200 yards (183 m [600.4 ft]) of the sonar source. Active sonar will not resume until the marine mammal has been seen to leave the area, has not been detected for 30 minutes, or the vessel has transited more than 2,000 yards (1,828 m [5,997.4 ft]) beyond the location of the last detection.

• Special conditions applicable for bow-riding dolphins only: If, after conducting an initial maneuver to avoid close quarters with dolphins, the Test Director or the Test Director's designee concludes that dolphins are deliberately closing to ride the vessel's bow wave, no further mitigation actions are necessary while the dolphins continue to exhibit bow wave riding behavior because the dolphins are out of the main transmission axis of the active sonar while in the shallow-wave area of the vessel bow.

• Sonar levels (generally)—Navy will operate sonar at the lowest practicable level, except as required to meet testing objectives.

*Clearance Procedures*

When the test platform (surface vessel or aircraft) arrives at the test site, an initial evaluation of environmental suitability will be made. This evaluation will include an assessment of sea state and verification that the area is clear of visually detectable marine mammals and indicators of their presence. For example, large flocks of birds and large schools of fish are considered indicators of potential marine mammal presence.

If the initial evaluation indicates that the area is clear, visual surveying will begin. The area will be visually surveyed for the presence of protected species and protected species indicators. Visual surveys will be conducted from the test platform before test activities begin. When the platform is a surface vessel, no additional aerial surveys will be required. For surveys requiring only surface vessels, aerial surveys may be opportunistically conducted by aircraft participating in the test.

Shipboard monitoring will be staged from the highest point possible on the vessel. The observer(s) will be experienced in shipboard surveys, familiar with the marine life of the area, and equipped with binoculars of sufficient magnification. Each observer will be provided with a two-way radio that will be dedicated to the survey, and will have direct radio contact with the Test Director. Observers will report to the Test Director any sightings of marine mammals or indicators of these species, as described previously. Distance and bearing will be provided when available. Observers may recommend a ''Go''/''No Go'' decision, but the final decision will be the responsibility of the Test Director.

Post-mission surveys will be conducted from the surface vessel(s) and aircraft used for pre-test surveys. Any affected marine species will be documented and reported to NMFS. The report will include the date, time, location, test activities, species (to the lowest taxonomic level possible), behavior, and number of animals.

NMFS has carefully evaluated the Navy's mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. NMFS's evaluation of potential measures included consideration of the following factors in relation to one another:

(1) The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;

(2) The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and

(3) The practicability of the measure for applicant implementation, including consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Based on our evaluation of the Navy's measures, as well as other measures considered by NMFS, we have determined that the mitigation measures provide the means of effecting the least practicable adverse impacts on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, while also considering personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

**Monitoring and Reporting**

In order to issue an ITA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking.'' The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for IHAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area.

The RDT&E Monitoring Program, planned by the Navy as part of its IHA application, is focused on mitigation-based monitoring. Main monitoring techniques include use of civilian personnel as marine mammal observers during pre-, during-, and post-test events.

Systematic monitoring of the affected area for marine mammals will be conducted prior to, during, and after test events using aerial and/or ship-based visual surveys. Observers will record information during the test activity. Data recorded will include exercise information (time, date, and location) and marine mammal and/or indicator presence, species, number of animals, their behavior, and whether there are changes in the behavior. Personnel will immediately report observed stranded or injured marine mammals to NMFS stranding response network and NMFS Regional Office. Reporting requirements will be included in the NSWC PCD Mission Activity Report and NSWC PCD Mission Activities Annual Monitoring Report as required by its Final Rule (DON, 2009a; NMFS, 2010).

*Ongoing Monitoring*

The Navy has an existing Monitoring Plan that provides for site-specific monitoring for MMPA and Endangered Species Act (ESA) listed species, primarily marine mammals within the Gulf of Mexico, including marine water areas of the Q–20 study area. The NSWC PCD Monitoring Plan (DON, 2011) was initially developed in support of the NSWC PCD Mission Activities Final Environmental Impact Statement/ Overseas Environmental Impact Statement and subsequent Final Rule by NMFS (DON, 2009a; NMFS, 2010). The primary goals of monitoring are to evaluate trends in marine species distribution and abundance in order to assess potential population effects from Navy training and testing events and determine the effectiveness of the Navy's mitigation measures. The monitoring plan, adjusted annually in consultation under an adaptive management review process with NMFS, includes aerial- and ship-based visual observations, acoustic monitoring, and other efforts such as oceanographic observations. The U.S.

Navy is not currently committing to increased visual surveys at this time, but will research opportunities for leveraged work that could be added under an adaptive management provision of the IHA application for future Q–20 study area monitoring.

*On-Going Reporting*

Due to changes in the program schedule, the Navy has not yet conducted any Q–20 activities under their current IHA. The Navy planned to conduct tests under the current IHA in April 2013.

**Estimated Take by Incidental Harassment**

Recent Navy applications, Draft Environmental Impact Statements, and proposed MMPA regulations for testing and training activities contain proposed acoustic criteria and thresholds that would, if adopted, represent changes from the criteria and thresholds currently employed by NMFS in incidental take authorizations and associated Biological Opinions for Navy military readiness activities. The revised thresholds are based on evaluations of recent scientific studies (Finneran *et al.,* 2010, Finneran and Schlundt, 2010, Tyack *et al.,* 2011). The proposed new criteria and thresholds based on the Finneran and Tyack studies have recently been made available for public comment, (78 FR 6978, January 31, 2013; 78 FR 7050, January 31, 2013), and the public comments are still being evaluated. Until that process is complete, it is not appropriate to apply the new criteria and thresholds in any take authorization or associated Biological Opinion. Instead, NMFS will continue its longstanding practice of considering specific modifications to the acoustic criteria and thresholds currently employed for incidental take authorizations only after providing the public with an opportunity for review and comment and responding to the comments.

*Definition of Harassment*

As mentioned previously, with respect to military readiness activities, Section 3(18)(B) of the MMPA defines ''harassment'' as: (i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B harassment].

*Level B Harassment*

Of the potential effects that were described in the ''Potential Effects of Exposure of Marine Mammals to Sonar'' section, the following are the types of effects that fall into the Level B harassment category:

Behavioral Harassment—Behavioral disturbance that rises to the level described in the definition above, when resulting from exposures to active sonar exposure, is considered Level B harassment. Some of the lower level physiological stress responses will also likely co-occur with the predicted harassments, although these responses are more difficult to detect and fewer data exist relating these responses to specific received levels of sound. When Level B harassment is predicted based on estimated behavioral responses, those takes may have a stress-related physiological component as well.

In the effects section above, we described the Southall *et al.,* (2007) severity scaling system and listed some examples of the three broad categories of behaviors: (0–3: Minor and/or brief behaviors); 4–6 (Behaviors with higher potential to affect foraging, reproduction, or survival); 7–9 (Behaviors considered likely to affect the aforementioned vital rates). Generally speaking, MMPA Level B harassment, as defined in this document, would include the behaviors described in the 7–9 category, and a subset, dependent on context and other considerations, of the behaviors described in the 4–6 categories. Behavioral harassment generally does not include behaviors ranked 0–3 in Southall *et al.,* (2007).

Acoustic Masking and Communication Impairment—Acoustic masking is considered Level B harassment as it can disrupt natural behavioral patterns by interrupting or limiting the marine mammal's receipt or transmittal of important information or environmental cues.

TTS—As discussed previously, TTS can affect how an animal behaves in response to the environment, including conspecifics, predators, and prey. The following physiological mechanisms are thought to play a role in inducing auditory fatigue: Effects to sensory hair cells in the inner ear that reduce their sensitivity, modification of the chemical environment within the sensory cells, residual muscular activity in the middle ear, displacement of certain inner ear membranes, increased blood flow, and post-stimulatory reduction in both efferent and sensory neural output. Ward (1997) suggested that when these effects result in TTS rather than PTS, they are within the normal bounds of physiological variability and tolerance and do not represent a physical injury. Additionally, Southall *et al.* (2007) indicate that although PTS is a tissue injury, TTS is not because the reduced hearing sensitivity following exposure to intense sound results primarily from fatigue, not loss, of cochlear hair cells and supporting structures and is reversible. Accordingly, NMFS classifies TTS (when resulting from exposure to Navy sonar) as Level B harassment, not Level A harassment (injury).

*Level A Harassment*

Of the potential effects that were described in the Potential Effects of Exposure of Marine Mammal to Sonar section, following are the types of effects that fall into the Level A harassment category:

PTS—PTS (resulting from exposure to active sonar) is irreversible and considered an injury. PTS results from exposure to intense sounds that cause a permanent loss of inner or outer cochlear hair cells or exceed the elastic limits of certain tissues and membranes in the middle and inner ears and results in changes in the chemical composition of the inner ear fluids.

*Acoustic Take Criteria*

For the purposes of an MMPA incidental take authorization, three types of take are identified: Level B harassment; Level A harassment; and mortality (or serious injury leading to mortality). The categories of marine mammal responses (physiological and behavioral) that fall into the two harassment categories were described in the previous section.

Because the physiological and behavioral responses of the majority of the marine mammals exposed to military sonar cannot be detected or measured, a method is needed to estimate the number of individuals that will be taken, pursuant to the MMPA, based on the planned action. To this end, NMFS uses acoustic criteria that estimate at what received level (when exposed to Navy sonar) Level B harassment and Level A harassment of marine mammals would occur. These acoustic criteria are discussed below.

Relatively few applicable data exist to support acoustic criteria specifically for HFAS (such as the Q–20 active sonar). However, because MFAS systems have larger impact ranges, NMFS will apply the criteria developed for the MFAS systems to the HFAS systems.

NMFS utilizes three acoustic criteria for HFAS/MFAS: PTS (injury—Level A

harassment), behavioral harassment from TTS, and sub-TTS (Level B harassment). Because the TTS and PTS criteria are derived similarly and the PTS criteria was extrapolated from the TTS data, the TTS and PTS acoustic criteria will be presented first, before the behavioral criteria.

For more information regarding these criteria, please see the Navy's FEIS for the NSWC PCD (Navy, 2009).

*Level B Harassment Threshold (TTS)*

As mentioned above, behavioral disturbance, acoustic masking, and TTS are all considered Level B harassment. Marine mammals would usually be behaviorally disturbed at lower received levels than those at which they would likely sustain TTS, so the levels at which behavioral disturbance is likely to occur are considered the onset of Level B harassment. The behavioral responses of marine mammals to sound are variable, context specific, and, therefore, difficult to quantify (see Risk Function section, below). TTS is a physiological effect that has been studied and quantified in laboratory conditions. NMFS also uses acoustic criteria to estimate the number of marine mammals that might sustain TTS incidental to a specific activity (in addition to the behavioral criteria).

A number of investigators have measured TTS in marine mammals. These studies measured hearing thresholds in trained marine mammals before and after exposure to intense sounds. The existing cetacean TTS data are summarized in the following bullets.

- Schlundt *et al.* (2000) reported the results of TTS experiments conducted with 5 bottlenose dolphins and 2 belugas exposed to 1-second tones. This paper also includes a reanalysis of preliminary TTS data released in a technical report by Ridgway *et al.* (1997). At frequencies of 3, 10, and 20 kHz, sound pressure levels (SPLs) necessary to induce measurable amounts (6 dB or more) of TTS were between 192 and 201 dB re 1 μPa (EL = 192 to 201 dB re 1 μPa$^2$-s). The mean exposure SPL and EL for onset-TTS were 195 dB re 1 μPa and 195 dB re 1 μPa$^2$-s, respectively.
- Finneran *et al.* (2001, 2003, 2005) described TTS experiments conducted with bottlenose dolphins exposed to 3-kHz tones with durations of 1, 2, 4, and 8 seconds. Small amounts of TTS (3 to 6 dB) were observed in one dolphin after exposure to ELs between 190 and 204 dB re 1 microPa$^2$-s. These results were consistent with the data of Schlundt *et al.* (2000) and showed that the Schlundt *et al.* (2000) data were not significantly affected by the masking sound used. These results also confirmed that, for tones with different durations, the amount of TTS is best correlated with the exposure EL rather than the exposure SPL.
- Nachtigall *et al.* (2003) measured TTS in a bottlenose dolphin exposed to octave-band sound centered at 7.5 kHz. Nachtigall *et al.* (2003a) reported TTSs of about 11 dB measured 10 to 15 minutes after exposure to 30 to 50 minutes of sound with SPL 179 dB re 1 μPa (EL about 213 dB re μPa$^2$-s). No TTS was observed after exposure to the same sound at 165 and 171 dB re 1 μPa. Nachtigall *et al.* (2004) reported TTSs of around 4 to 8 dB 5 minutes after exposure to 30 to 50 minutes of sound with SPL 160 dB re 1 μPa (EL about 193 to 195 dB re 1 μPa$^2$-s). The difference in results was attributed to faster post exposure threshold measurement—TTS may have recovered before being detected by Nachtigall *et al.* (2003). These studies showed that, for long duration exposures, lower sound pressures are required to induce TTS than are required for short-duration tones.
- Finneran *et al.* (2000, 2002) conducted TTS experiments with dolphins and belugas exposed to impulsive sounds similar to those produced by distant underwater explosions and seismic waterguns. These studies showed that, for very short-duration impulsive sounds, higher sound pressures were required to induce TTS than for longer-duration tones.

Some of the more important data obtained from these studies are onset-TTS levels (exposure levels sufficient to cause a just-measurable amount of TTS) often defined as 6 dB of TTS (for example, Schlundt *et al.,* 2000) and the fact that energy metrics (sound exposure levels (SEL), which include a duration component) better predict when an animal will sustain TTS than pressure (SPL) alone. NMFS's TTS criteria (which indicate the received level at which onset TTS (≤6dB) is induced) for HFAS/MFAS are as follows:

- Cetaceans—195 dB re 1 μPa$^2$-s (based on mid-frequency cetaceans—no published data exist on auditory effects of noise in low or high frequency cetaceans) (Southall *et al.,* 2007).

A detailed description of how TTS criteria were derived from the results of the above studies may be found in Chapter 3 of Southall *et al.* (2007), as well as the Navy's Q–20 IHA application.

*Level A Harassment Threshold (PTS)*

For acoustic effects, because the tissues of the ear appear to be the most susceptible to the physiological effects of sound, and because threshold shifts tend to occur at lower exposures than other more serious auditory effects, NMFS has determined that PTS is the best indicator for the smallest degree of injury that can be measured. Therefore, the acoustic exposure associated with onset-PTS is used to define the lower limit of the Level A harassment.

PTS data do not currently exist for marine mammals and are unlikely to be obtained due to ethical concerns. However, PTS levels for these animals may be estimated using TTS data from marine mammals and relationships between TTS and PTS that have been discovered through study of terrestrial mammals. NMFS uses the following acoustic criteria for injury:

- Cetaceans—215 dB re 1 μPa $^2$-s (based on mid-frequency cetaceans—no published data exist on auditory effects of noise in low or high frequency cetaceans) (Southall *et al.,* 2007).

These criteria are based on a 20 dB increase in SEL over that required for onset-TTS. Extrapolations from terrestrial mammal data indicate that PTS occurs at 40 dB or more of TS, and that TS growth occurs at a rate of approximately 1.6 dB TS per dB increase in EL. There is a 34-dB TS difference between onset-TTS (6 dB) and onset-PTS (40 dB). Therefore, an animal would require approximately 20-dB of additional exposure (34 dB divided by 1.6 dB) above onset-TTS to reach PTS. A detailed description of how TTS criteria were derived from the results of the above studies may be found in Chapter 3 of Southall *et al.* (2007), as well as the Navy's NSWC PCD LOA application. Southall *et al.* (2007) recommend a precautionary dual criteria for TTS (230 dB re 1 μPa (SPL) in addition to 215 re 1 μPa $^2$-s (SEL)) to account for the potentially damaging transients embedded within non-pulse exposures. However, in the case of HFAS/MFAS, the distance at which an animal would receive 215 (SEL) is farther from the source than the distance at which they would receive 230 (SPL) and therefore, it is not necessary to consider 230 dB.

We note here that behaviorally mediated injuries (such as those that have been hypothesized as the cause of some beaked whale strandings) could potentially occur in response to received levels lower than those believed to directly result in tissue damage. As mentioned previously, data to support a quantitative estimate of these potential effects (for which the exact mechanism is not known and in which factors other than received level may play a significant role) do not exist.

*Level B Harassment Risk Function (Behavioral Harassment)*

The first MMPA authorization for take of marine mammals incidental to tactical active sonar was issued in 2006 for Navy Rim of the Pacific training exercises in Hawaii. For that authorization, NMFS used 173 dB SEL as the criterion for the onset of behavioral harassment (Level B harassment). This type of single number criterion is referred to as a step function, in which (in this example) all animals estimated to be exposed to received levels above 173 dB SEL would be predicted to be taken by Level B harassment and all animals exposed to less than 173 dB SEL would not be taken by Level B harassment. As mentioned previously, marine mammal behavioral responses to sound are highly variable and context specific (affected by differences in acoustic conditions; differences between species and populations; differences in gender, age, reproductive status, or social behavior; or the prior experience of the individuals), which does not support the use of a step function to estimate behavioral harassment.

Unlike step functions, acoustic risk continuum functions (which are also called ''exposure-response functions,'' ''dose-response functions,'' or ''stress response functions'' in other risk assessment contexts) allow for probability of a response that NMFS would classify as harassment to occur over a range of possible received levels (instead of one number) and assume that the probability of a response depends first on the ''dose'' (in this case, the received level of sound) and that the probability of a response increases as the ''dose'' increases. The Navy and NMFS have previously used acoustic risk functions to estimate the probable responses of marine mammals to acoustic exposures in the Navy FEISs on the SURTASS LFA sonar (DoN, 2001c) and the North Pacific Acoustic Laboratory experiments conducted off the Island of Kauai (ONR, 2001). The specific risk functions used here were also used in the MMPA regulations and FEIS for Hawaii Range Complex (HRC), Southern California Range Complex (SOCAL), and Atlantic Fleet Active Sonar Testing (AFAST). As discussed in the Effects section, factors other than received level (such as distance from or bearing to the sound source) can affect the way that marine mammals respond; however, data to support a quantitative analysis of those (and other factors) do not currently exist. NMFS will continue to modify these criteria as new data becomes available.

To assess the potential effects on marine mammals associated with active sonar used during training activity, the Navy and NMFS applied a risk function that estimates the probability of behavioral responses that NMFS would classify as harassment for the purposes of the MMPA given exposure to specific received levels of MFA sonar. The mathematical function is derived from a solution in Feller (1968) as defined in the SURTASS LFA Sonar Final OEIS/EIS (DoN, 2001), and relied on in the Supplemental SURTASS LFA Sonar EIS (DoN, 2007a) for the probability of MFA sonar risk for MMPA Level B behavioral harassment with input parameters modified by NMFS for MFA sonar for mysticetes and odontocetes (NMFS, 2008). The same risk function and input parameters will be applied to high frequency active (HFA) (≤10 kHz) sources until applicable data becomes available for high frequency sources.

In order to represent a probability of risk, the function should have a value near zero at very low exposures, and a value near one for very high exposures. One class of functions that satisfies this criterion is cumulative probability distributions, a type of cumulative distribution function. In selecting a particular functional expression for risk, several criteria were identified:

- The function must use parameters to focus discussion on areas of uncertainty;
- The function should contain a limited number of parameters;
- The function should be capable of accurately fitting experimental data; and
- The function should be reasonably convenient for algebraic manipulations.

As described in U.S. Department of the Navy (2001), the mathematical function below is adapted from a solution in Feller (1968).

$$R = \frac{1-\left(\frac{L-B}{K}\right)^{-A}}{1-\left(\frac{L-B}{K}\right)^{-2A}}$$

Where:

R = Risk (0—1.0)
L = Received level (dB re: 1 μPa)
B = Basement received level = 120 dB re: 1 μPa
K = Received level increment above B where 50 percent risk = 45 dB re: 1 μPa
A = Risk transition sharpness parameter = 10 (odontocetes) or 8 (mysticetes)

In order to use this function to estimate the percentage of an exposed population that would respond in a manner that NMFS classifies as Level B harassment, based on a given received level, the values for B, K and A need to be identified.

B Parameter (Basement)—The B parameter is the estimated received level below which the probability of disruption of natural behavioral patterns, such as migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered approaches zero for the HFAS/MFAS risk assessment. At this received level, the curve would predict that the percentage of the exposed population that would be taken by Level B harassment approaches zero. For HFAS/MFAS, NMFS has determined that B = 120 dB. This level is based on a broad overview of the levels at which many species have been reported responding to a variety of sound sources.

K Parameter (representing the 50 percent Risk Point)—The K parameter is based on the received level that corresponds to 50 percent risk, or the received level at which we believe 50 percent of the animals exposed to the designated received level will respond in a manner that NMFS classifies as Level B harassment. The K parameter (K = 45 dB) is based on three datasets in which marine mammals exposed to mid-frequency sound sources were reported to respond in a manner that NMFS would classify as Level B harassment. There is widespread consensus that marine mammal responses to HFA/MFA sound signals need to be better defined using controlled exposure experiments (Cox *et al.,* 2006; Southall *et al.,* 2007). The Navy is contributing to an ongoing behavioral response study in the Bahamas that is expected to provide some initial information on beaked whales, the species identified as the most sensitive to MFAS. NMFS is leading this international effort with scientists from various academic institutions and research organizations to conduct studies on how marine mammals respond to underwater sound exposures. Until additional data is available, however, NMFS and the Navy have determined that the following three data sets are most applicable for the direct use in establishing the K parameter for the HFAS/MFAS risk function. These data sets, summarized below, represent the only known data that specifically relate altered behavioral responses (that NMFS would consider Level B harassment) to exposure to HFAS/MFAS sources.

Even though these data are considered the most representative of the specified activities, and therefore the most appropriate on which to base the K parameter (which basically determines

the midpoint) of the risk function, these data have limitations, which are discussed in Appendix J of the Navy's EIS for the NSWC PCD (DoN, 2009) and summarized in the Navy's IHA application.

Calculation of K Parameter—NMFS and the Navy used the mean of the following values to define the midpoint of the function: (1) The mean of the lowest received levels (185.3 dB) at which individuals responded with altered behavior to 3 kHz tones in the SSC data set; (2) the estimated mean received level value of 169.3 dB produced by the reconstruction of the USS SHOUP incident in which killer whales exposed to MFA sonar (range modeled possible received levels: 150 to 180 dB); and (3) the mean of the 5 maximum received levels at which Nowacek *et al.* (2004) observed significantly altered responses of right whales to the alert stimuli than to the control (no input signal) is 139.2 dB SPL. The arithmetic mean of these three mean values is 165 dB SPL. The value of K is the difference between the value of B (120 dB SPL) and the 50 percent value of 165 dB SPL; therefore, K=45.

A Parameter (Steepness)—NMFS determined that a steepness parameter (A)=10 is appropriate for odontocetes (except harbor porpoises) and pinnipeds and A=8 is appropriate for mysticetes.

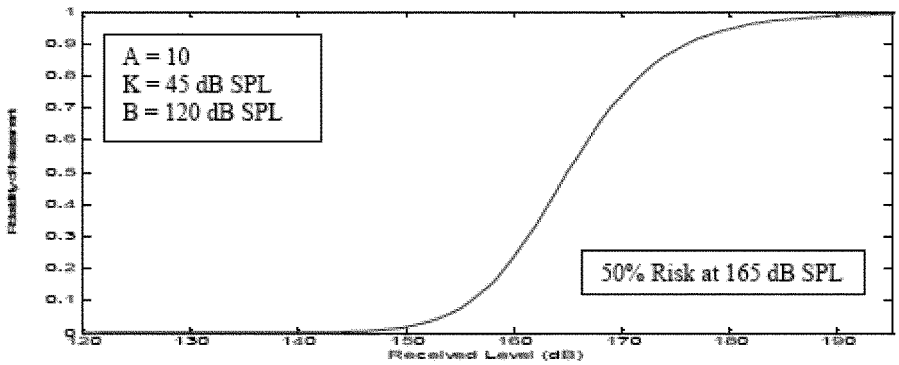
The use of a steepness parameter of A=10 for odontocetes (except harbor porpoises) for the HFAS/MFAS risk function was based on the use of the same value for the SURTASS LFA risk continuum, which was supported by a sensitivity analysis of the parameter presented in Appendix D of the SURTASS/LFA FEIS (DoN, 2001c). As concluded in the SURTASS FEIS/EIS, the value of A=10 produces a curve that has a more gradual transition than the curves developed by the analyses of migratory gray whale studies (Malme *et al.,* 1984; Buck and Tyack, 2000; and SURTASS LFA Sonar EIS, Subchapters 1.43, 4.2.4.3 and Appendix D, and NMFS, 2008).

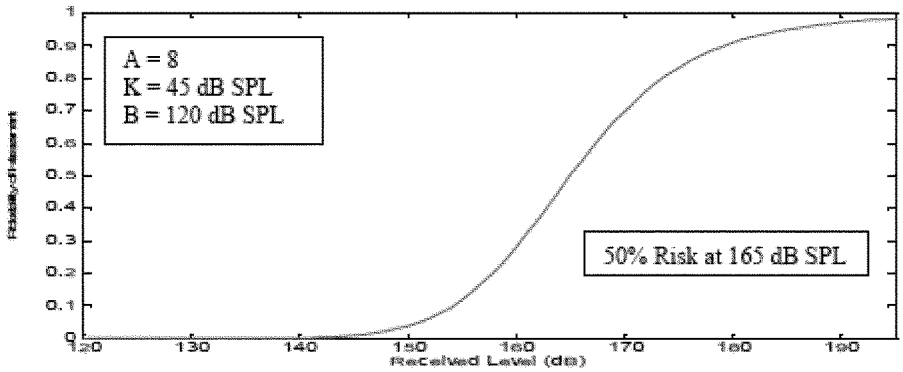
NMFS determined that a lower steepness parameter (A=8), resulting in a shallower curve, was appropriate for use with mysticetes and HFAS/MFAS. The Nowacek *et al.* (2004) dataset contains the only data illustrating mysticete behavioral responses to a mid-frequency sound source. A shallower curve (achieved by using A=8) better reflects the risk of behavioral response at the relatively low received levels at which behavioral responses of right whales were reported in the Nowacek *et al.* (2004) data. Compared to the odontocete curve, this adjustment results in an increase in the proportion of the exposed population of mysticetes being classified as behaviorally harassed at lower RLs, such as those reported in and supported by the only dataset currently available.

Basic Application of the Risk Function—The risk function is used to estimate the percentage of an exposed population that is likely to exhibit behaviors that would qualify as harassment (as that term is defined by the MMPA applicable to military readiness activities, such as the Navy's testing and research activities with HFA/MFA sonar) at a given received level of sound. For example, at 165 dB SPL (dB re: 1 μPa rms), the risk (or probability) of harassment is defined according to this function as 50 percent, and Navy/NMFS applies that by estimating that 50 percent of the individuals exposed at that received level are likely to respond by exhibiting behavior that NMFS would classify as behavioral harassment. The risk function is not applied to individual animals, only to exposed populations.

The data primarily used to produce the risk function (the K parameter) were compiled from four species that had been exposed to sound sources in a variety of different circumstances. As a result, the risk function represents a general relationship between acoustic exposures and behavioral responses that is then applied to specific circumstances. That is, the risk function represents a relationship that is deemed to be generally true, based on the limited, best-available science, but may not be true in specific circumstances. In particular, the risk function, as currently derived, treats the received level as the only variable that is relevant to a marine mammal's behavioral response. However, we know that many other variables—the marine mammal's gender, age, and prior experience; the activity it is engaged in during an exposure event, its distance from a sound source, the number of sound sources, and whether the sound sources are approaching or moving away from the animal—can be critically important in determining whether and how a marine mammal will respond to a sound source (Southall *et al.,* 2007). The data that are currently available do not allow for incorporation of these other variables in the current risk functions; however, the risk function represents the best use of the data that are available (Figure 1).

Figure 1. Risk functions for odontocetes (above) and mysticetes (below).




As more specific and applicable data become available for HFAS/MFAS sources, NMFS can use these data to modify the outputs generated by the risk function to make them more realistic. Ultimately, data may exist to justify the use of additional, alternate, or multivariate functions. For example, as mentioned previously, the distance from the sound source and whether it is perceived as approaching or moving away can affect the way an animal responds to a sound (Wartzok *et al.,* 2003).

*Estimated Exposures of Marine Mammals*

Acoustical modeling provides an estimate of the actual exposures. Detailed information and formulas to model the effects of sonar from Q–20 sonar testing activities in the Q–20 study area are provided in Appendix A, Supplemental Information for Underwater Noise Analysis of the Navy's IHA application.

The quantitative analysis was based on conducting sonar operations in 13 different geographical regions, or provinces. Using combined marine mammal density and depth estimates, which are detailed later in this section, acoustical modeling was conducted to calculate the actual exposures. Refer to Appendix B, Geographic Description of Environmental Provinces of the Navy's IHA application, for additional information on provinces. Refer to Appendix C, Definitions and Metrics for Acoustic Quantities of the Navy's IHA application, for additional information regarding the acoustical analysis.

The approach for estimating potential acoustic effects from Q–20 test activities on cetacean species uses the methodology that the DON developed in cooperation with NMFS for the Navy's HRC Draft EIS (DON, 2007c). The exposure analysis for behavioral response to sound in the water uses energy flux density for Level A harassment and the methods for risk function for Level B harassment (behavioral). The methodology is provided here to determine the number and species of marine mammals for which incidental take authorization is requested. NMFS concurs with the Navy's approach and that these are the appropriate methodologies.

To estimate acoustic effects from the Q–20 test activities, acoustic sources to be used were examined with regard to their operational characteristics as described in the previous section. Systems with an operating frequency greater than 200 kHz were not analyzed in the detailed modeling as these signals attenuate rapidly resulting in very short propagation distances. Based on the information above, the Navy modeled the Q–20 sonar parameters including source levels, ping length, the interval between pings, output frequencies, directivity (or angle), and other characteristics based on records from previous test scenarios and projected future testing. Additional information on sonar systems and their associated parameters is in Appendix A, Supplemental Information for Underwater Noise Analysis of the Navy's IHA application.

Every active sonar operation includes the potential to expose marine animals in the neighboring waters. The number of animals exposed to the sonar is dictated by the propagation field and the manner in which the sonar is operated (i.e., source level, depth, frequency, pulse length, directivity, platform speed, repetition rate). The modeling for Q–20 test activities

involving sonar occurred in five broad steps listed below, and was conducted based on the typical RDT&E activities planned for the Q–20 study area.

1. Environmental Provinces: The Q–20 study area is divided into 13 environmental provinces, and each has a unique combination of environmental conditions. These represent various combinations of eight bathymetry provinces, one Sound Velocity Profile (SVP) province, and three Low-Frequency Bottom Loss geo-acoustic provinces and two High-Frequency Bottom Loss classes. These are addressed by defining eight fundamental environments in two seasons that span the variety of depths, bottom types, sound speed profiles, and sediment thicknesses found in the Q–20 study area. The two seasons encompass winter and summer, which are the two extremes for the GOM, the acoustic propagation characteristics do not vary significantly between the two. Each marine modeling area can be quantitatively described as a unique combination of these environments.

2. Transmission Loss: Since sound propagates differently in these environments, separate transmission loss calculations must be made for each, in both seasons. The transmission loss is predicted using Comprehensive Acoustic Simulation System/Gaussian Ray Bundle (CASS–GRAB) sound modeling software.

3. Exposure Volumes: The transmission loss, combined with the source characteristics, gives the energy field of a single ping. The energy of more than 10 hours of pinging is summed, carefully accounting for overlap of several pings, so an accurate average exposure of an hour of pinging is calculated for each depth increment. At more than 10 hours, the source is too far away and the energy is negligible. Repeating this calculation for each environment in each season gives the hourly ensonified volume, by depth, for each environment and season. This step begins the method for risk function modeling.

4. Marine Mammal Densities: The marine mammal densities were given in two dimensions, but using reliable peer-reviewed literature sources (published literature and agency reports) described in the following subsection, the depth regimes of these marine mammals are used to project the two dimensional densities (expressed as the number of animals per area where all individuals are assumed to be at the water's surface) into three dimensions (a volumetric approach whereby two-dimensional animal density incorporates depth into the calculation estimates).

5. Exposure Calculations: Each marine mammal's three-dimensional (3–D) density is multiplied by the calculated impact volume to that marine mammal depth regime. This value is the number of exposures per hour for that particular marine mammal. In this way, each marine mammal's exposure count per hour is based on its density, depth habitat, and the ensonified volume by depth.

The planned sonar hours were inserted and a cumulative number of exposures was determined for the action.

Based on the analysis, Q–20 sonar operations in non-territorial waters may expose up to six species to sound likely to result in Level B (behavioral) harassment (Table 2). They include the bottlenose dolphin (*Tursiops truncatus*), Atlantic spotted dolphin (*Stenella frontalis*), pantropical spotted dolphin (*Stenella attenuata*), striped dolphin (*Stenella coeruleoalba*), spinner dolphin (*Stenella longirostris*), and Clymene dolphin (*Stenella clymene*). No marine mammals would be exposed to levels of sound likely to result in TTS. NMFS has authorized (and the Navy requested) the take numbers of marine mammals in the IHA which reflect the exposure numbers listed in Table 3.

TABLE 3—ESTIMATES AND REQUESTED TAKE OF MARINE MAMMAL EXPOSURES FROM SONAR IN NON-TERRITORIAL WATERS PER YEAR

[See Table 5–1 in the IHA application.]

| Marine mammal species | Level A harassment | Level B harassment (TTS) | Level B harassment (behavioral) |
|---|---|---|---|
| Atlantic spotted dolphin | 0 | 0 | 315 |
| Bottlenose dolphin | 0 | 0 | 399 |
| Clymene dolphin | 0 | 0 | 42 |
| Pantropical spotted dolphin | 0 | 0 | 126 |
| Spinner dolphin | 0 | 0 | 126 |
| Striped dolphin | 0 | 0 | 42 |

*Potential for Long-Term Effects*

Q–20 test activities will be conducted in the same general areas, so marine mammal populations could be exposed to repeated activities over time. However, as described earlier, this analysis assumes that short-term non-injurious SELs predicted to cause temporary behavioral disruptions qualify as Level B harassment. It is highly unlikely that behavioral disruptions will result in any long-term significant effects.

*Potential for Effects on ESA-Listed Species*

To further examine the possibility of whale exposures from the planned testing, CASSGRAB sound modeling software was used to estimate transmission losses and received sound pressure levels (SPLs) from the Q–20 when operating in the test area. Specifically, four radials out towards DeSoto Canyon (which is considered an important habitat for the ESA-listed sperm whales) were calculated. The results indicate the relatively rapid attenuation of sound pressure levels with distance from the source, which is not surprising given the high frequency of the source. Below 120 dB, the risk of significant change in a biologically important behavior approaches zero. This threshold is reached at a distance of only 2.8 km (1.5 nmi) from the source. With the density of sperm whales being near zero in this potential zone of influence, this calculation reinforces NMFS's conclusion that the activity is not likely to result in the take of sperm whales. It should also be noted that DeSoto Canyon is well beyond the distance at which sound pressure levels from the Q–20 attenuate to zero.

**Encouraging and Coordinating Research**

The Navy sponsors a significant portion of research concerning the effects of human-generated sound in marine mammals. Worldwide, the Navy funded over $16 million in marine mammal research in 2012. Major topics of Navy-supported research include:

- Gaining a better understanding of marine species distribution and important habitat areas.
- Developing methods to detect and monitor marine species before and during training.
- Understanding the effects of sound on marine mammals.
- Developing tools to model and estimate potential effects of sound.

This research is directly applicable to the Q–20 study area, particularly with respect to the investigations of the potential effects of underwater noise sources on marine mammals and other protected species.

Furthermore, various research cruises by NMFS and academic institutions have been augmented with additional funding from the Navy. The Navy has also sponsored several workshops to evaluate the current state of knowledge and potential for future acoustic monitoring of marine mammals. The workshops brought together acoustic experts and marine biologists from the Navy and other research organizations to present data and information on current acoustic monitoring research efforts and to evaluate the potential for incorporating similar technology and methods on instrumented ranges.

The Navy will continue to fund ongoing marine mammal research, and includes projected funding at levels greater than $14 million per year in subsequent years. The Navy also has plans to continue in the coordination of long-term monitoring and studies of marine mammals on various established ranges and within its OPAREAs. The Navy will continue to research and contribute to university/external research to improve the state of the knowledge of the science regarding the biology and ecology of marine species, and potential acoustic effects on species from naval activities. These efforts include mitigation and monitoring programs, data sharing with NMFS and via the literature for research and development efforts, and future research, as described previously.

**Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses**

Section 101(a)5)(D) of the MMPA also requires NMFS to determine that the authorization will not have an unmitigable adverse effect on the availability of marine mammal species or stocks for subsistence use. There are no relevant subsistence uses of marine mammals in the study area (in the Gulf of Mexico) that implicate MMPA section 101(a)(5)(D).

**Negligible Impact Determination**

Pursuant to NMFS's regulations implementing the MMPA, an applicant is required to estimate the number of animals that will be ''taken'' by the specified activities (i.e., takes by harassment only, or takes by harassment, injury, serious injury, and/or death). This estimate informs NMFS's analysis of whether the activity will have a ''negligible impact'' on the species or stock. To issue an IHA, NMFS must determine among other things, that the incidental take by harassment caused by the specified activity will have a negligible impact on affected species or stocks of marine mammals. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''. . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' Level B (behavioral) harassment occurs at the level of the individual(s) and does not necessarily result in population-level consequences, though there are known avenues through which behavioral disturbance of individuals can result in population-level effects. A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (i.e., population-level effects). An estimate of the number of Level B harassment takes, alone, is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through behavioral harassment, NMFS must consider other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, migration, etc.), or any of the other variables mentioned in the first paragraph (if known), as well as the number and nature of estimated Level A takes, the number of estimated serious injuries and/or mortalities, and effects on habitat.

The Navy's specified activities have been described based on best estimates of the number of Q–20 sonar test hours that the Navy will conduct. Taking the above into account, considering the sections discussed below, and dependent upon the implementation of the mitigation measures, NMFS has determined that Navy's Q–20 sonar test activities in the non-territorial waters will have a negligible impact on the marine mammal species and stocks present in the Q–20 study area.

*Behavioral Harassment*

Behavioral harassment from the Navy's training activities are expected to occur as discussed in the ''Potential Effects of Exposure of Marine Mammals to Sonar'' section and illustrated in the conceptual framework, marine mammals can respond to HFAS/MFAS in many different ways, a subset of which qualifies as harassment. One thing that the take estimates do not take into account is the fact that most marine mammals will likely avoid strong sound sources to one extent or another. Although an animal that avoids the sound source will likely still be taken in some instances (such as if the avoidance results in a missed opportunity to feed, interruption of reproductive behaviors, etc.), in other cases avoidance may result in fewer instances of take than were estimated or in the takes resulting from exposure to a lower received level than was estimated, which could result in a less severe response. The Navy proposes a cumulative total of only 420 hours of high-frequency sonar operations per year for the Q–20 sonar testing activities, spread among 42 days with an average of 10 hours per day, in the Q–20 study area. There will be no powerful tactical mid-frequency sonar involved. Therefore, there will be no disturbance to marine mammals resulting from MFAS systems (such as 53C). The effects that might be expected from the Navy's major training exercises at the Atlantic Fleet Active Sonar Training (AFAST) Range, Hawaii Range Complex (HRC), and Southern California (SOCAL) Range Complex will not occur here. The source level of the Q–20 sonar is much lower than the 53C series MFAS system, and high frequency signals tend to have more attenuation in the water column and are more prone to lose their energy during propagation. Therefore, their zones of influence are much smaller, thereby making it easier to detect marine mammals and prevent adverse effects from occurring.

The Navy has been conducting monitoring activities since 2006 on its sonar operations in a variety of the Naval range complexes (e.g., AFAST, HRC, SOCAL) under the Navy's own protective measures and under the regulations and LOAs. Monitoring reports based on these major training exercises using military sonar have shown that no marine mammal injury or

mortality has occurred as a result of the sonar operations (DoN, 2011a; 2011b).

*Diel Cycle*

As noted previously, many animals perform vital functions, such as feeding, resting, traveling, and socializing on a diel cycle (24-hr cycle). Substantive behavioral reactions to noise exposure (such as disruption of critical life functions, displacement, or avoidance of important habitat) are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.,* 2007).

In the previous section, we discussed the fact that potential behavioral responses to HFAS/MFAS that fall into the category of harassment could range in severity. By definition, the takes by behavioral harassment involve the disturbance of a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns (such as migration, surfacing, nursing, breeding, feeding, or sheltering) to a point where such behavioral patterns are abandoned or significantly altered. In addition, the amount of time the Q–20 sonar testing will occur is 420 hours per year in non-territorial waters, and is spread among 42 days with an average of 10 hours per day. Thus the exposure is expected to be sporadic throughout the year and is localized within a specific testing site. NMFS anticipates that the Navy's training activities will not result in substantial behavioral disturbance to recruitment or survival because the exposure is expected to be less intense than other sound sources and spread out over time, which should allow for periods of recovery.

*TTS*

Based on the Navy's model and NMFS analysis, it is unlikely that marine mammals would be exposed to sonar received levels that could cause TTS due to the lower source level (207 to 212 dB re 1 μPa at 1 m) and high attenuation rate of the HAFS signals (above 35 kHz).

*Acoustic Masking or Communication Impairment*

As discussed above, it is possible that anthropogenic sound could result in masking of marine mammal communication and navigation signals. However, masking only occurs during the time of the signal (and potential secondary arrivals of indirect rays), versus TTS, which occurs continuously for its duration. The Q–20 ping duration is in milliseconds and the system is relatively low-powered making its range of effect smaller. Therefore, masking effects from the Q–20 sonar signals are expected to be minimal. If masking or communication impairment were to occur briefly, it would be in the frequency range of above 35 kHz (the lower limit of the Q–20 signals), which overlaps with some marine mammal vocalizations; however, it would likely not mask the entirety of any particular vocalization or communication series because the pulse length, frequency, and duty cycle of the Q–20 sonar signal does not perfectly mimic the characteristics of any marine mammal's vocalizations.

*PTS, Injury, or Mortality*

Based on the Navy's model and NMFS analysis, it is unlikely that PTS, injury, or mortality of marine mammals would occur from the Q–20 sonar testing activities. As discussed earlier, the lower source level (207–212 dB re 1 μPa at 1 m) and high attenuation rate of the HFAS signals (above 35 kHz) make it highly unlikely that any marine mammals in the vicinity would be injured (including PTS) or killed as a result of sonar exposure. Therefore, no take by Level A harassment, serious injury, or mortality is anticipated; nor would it be authorized under the IHA.

Based on the aforementioned assessment, NMFS determines that approximately 399 bottlenose dolphins, 126 pantropical spotted dolphins, 315 Atlantic spotted dolphins, 126 spinner dolphins, 42 Clymene dolphins, and 42 striped dolphins would be affected by Level B behavioral harassment as a result of the Q–20 sonar testing activities.

Based on the supporting analyses suggesting that no marine mammals would be killed, seriously injured, injured, or receive TTS as a result of the Q–20 sonar testing activities coupled with our assessment that these impacts will be of limited intensity and duration and likely not occur in areas and times critical to significant behavioral patterns such as reproduction, NMFS has determined that the taking by Level B harassment of these species or stocks as a result of the Navy's Q–20 sonar test will have a negligible impact on the marine mammal species and stocks present in the Q–20 study area.

**Endangered Species Act**

Under section 7 of the ESA, the Navy has made a no effect determination on ESA-listed species (e.g., sperm whales, sea turtles, Gulf sturgeon, sawfish), an no critical habitat for ESA-listed species would be impacted; therefore, consultation with NMFS, Office of Protected Resources, Endangered Species Act Interagency Cooperation Division, on this planned Q–20 testing is not required. NMFS (Permits and Conservation Division) will also not formally consult with NMFS (Endangered Species Act Interagency Cooperation Division) on the issuance of an IHA under section 101(a)(5)(D) of the MMPA for this activity. Based on the analysis of the Navy Marine Resources Assessment (MRA) data on marine mammal distributions, there is near zero probability that the sperm whale will occur in the vicinity of the Q–20 study area. No other ESA-listed marine mammal is expected to occur in the vicinity of the test area. In addition, acoustic modeling analysis indicates that none of the ESA-listed marine mammal species would be exposed to levels of sound that would constitute a ''take'' under the MMPA, due to the low source level and high attenuation rates of the Q–20 sonar signal.

**National Environmental Policy Act**

In 2009, the Navy prepared a ''Final Environmental Impact Statement/Overseas Environmental Impact Statement for the NSWC PCD Mission Activities'' (FEIS/OEIS), and NMFS subsequently adopted the FEIS/OEIS for its rule governing the Navy's RDT&E activities in the NSWC PCD study area. With its IHA application, the Navy also prepared and submitted an ''Overseas Environmental Assessment Testing the AN/AQS–20A Mine Reconnaissance Sonar System in the NSWC PCD Testing Range, 2012–2014.'' To meet NMFS's National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) requirements for the issuance of an IHA to the Navy, NMFS prepared an ''Environmental Assessment for the Issuance of an Incidental Harassment Authorization to Take Marine Mammals by Harassment Incidental to Conducting High-Frequency Sonar Testing Activities in the Naval Surface Warfare Center Panama City Division'' and signed a FONSI on July 24, 2012 prior to the issuance of the IHA for the Navy's activities in July 2012 to July 2013. The currently planned Q–20 sonar testing activities that would be covered by the IHA from July 2013 to July 2014 are similar to the sonar testing activities described in the NMFS EA for the issuance of an IHA and the Navy's FEIS/OEIS and EA for NSWC PCD mission activities, and the effects of the IHA fall within the scope of those documents and do not require further supplementation. After considering the EA, the information in the IHA

application, the **Federal Register** notice, as well as public comments, NMFS has determined that the issuance of the IHA is not likely to result in significant impacts on the human environment and has reaffirmed its FONSI. An Environmental Impact Statement is not required and will not be prepared for the action.

### Authorization

NMFS has issued an IHA for the take of six species of marine mammals, by Level B harassment, at levels specified in Table 3 (above) to the Navy for testing the Q–20 sonar system in non-territorial waters of the NSWC PCD testing range in the GOM, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: July 25, 2013.

**Donna S. Wieting,**

*Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2013–18785 Filed 8–2–13; 8:45 am]

**BILLING CODE 3510–22–P**

## BUREAU OF CONSUMER FINANCIAL PROTECTION

### Privacy Act of 1974, as Amended

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Notice of a Revised Privacy Act System of Records.

**SUMMARY:** In accordance with the Privacy Act of 1974, as amended, the Bureau of Consumer Financial Protection, hereinto referred to as the Consumer Financial Protection Bureau (CFPB or Bureau), gives notice of the establishment of a revised Privacy Act System of Records.

**DATES:** Comments must be received no later than September 4, 2013. The new system of records will be effective September 16, 2013, unless the comments received result in a contrary determination. ADDRESSES: You may submit comments by any of the following methods:

- *Electronic: privacy@cfpb.gov.*
- *Mail/Hand Delivery/Courier:* Claire Stapleton, Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.

Comments will be available for public inspection and copying at 1700 G Street NW., Washington, DC 20552 on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect comments by telephoning (202) 435–7220. All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

**FOR FURTHER INFORMATION CONTACT:** Claire Stapleton, Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552, (202) 435–7220.

**SUPPLEMENTARY INFORMATION:** The CFPB revises its Privacy Act System of Records Notice (SORN) ''CFPB.001—CFPB Freedom of Information Act (FOIA)/Privacy Act (PA) System.'' In revising this SORN, the CFPB modifies the notification procedures for individuals seeking access to records maintained in this system; modifies the system location, system manager(s) and address; consolidates two routine uses (previously routine uses 6 and 7) which include the disclosure of personally identifiable information (PII) from the system to the U.S. Department of Justice (DOJ) for its use in providing legal advice to the CFPB or in representing the CFPB in a legal proceeding; and adds a new routine use for the disclosure of PII to law enforcement agencies as appropriate.

The report of the revised system of records has been submitted to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated November 30, 2000,[1] and the Privacy Act, 5 U.S.C. 552a(r).

The revised system of records entitled ''CFPB.001—CFPB Freedom of Information Act/Privacy Act System'' is published in its entirety below.

Dated: July 30, 2013.

**Claire Stapleton,**

*Chief Privacy Officer, Bureau of Consumer Financial Protection.*

### CFPB.001

**SYSTEM NAME:**

CFPB Freedom of Information Act/Privacy Act System

**SYSTEM LOCATION:**

Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals covered by this system are persons who cite the Freedom of Information Act or Privacy Act to request access to records or whose information requests are treated as FOIA requests. Other individuals covered include CFPB staff assigned to process such requests, and employees who may have responsive records or are mentioned in such records. FOIA requests are subject to the PA only to the extent that they concern individuals; information pertaining to corporations and other business entities and organizations are not subject to the PA.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records in the system may contain: (1) Correspondence with the requester including initial requests and appeals; (2) documents generated or compiled during the search and processing of the request; (3) fee schedules, cost calculations, and accessed cost for disclosed FOIA records; (4) documents and memoranda supporting the decision made in response to the request, referrals, and copies of records provided or withheld; (5) CFPB staff assigned to process, consider, and respond to requests and, where a request has been referred to another agency with equities in a responsive document, information about the individual handling the request on behalf of that agency; (6) information identifying the entity that is subject to the requests or appeals; (7) requester information, including name, address, phone number, email address; FOIA tracking number, phone number, fax number, or some combination thereof; and (8) for access requests under the Privacy Act, identifying information regarding both the party who is making the written request or appeal, and the individual on whose behalf such written requests or appeals are made, including name, Social Security number (SSNs may be submitted with documentation or as proof of identification), address, phone number, email address, FOIA number, phone number, fax number, or some combination thereof.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Public Law 111–203, Title X, Sections 1011, 1012, 1021, codified at 12 U.S.C. §§§ 5491, 5492, 5511; The Freedom of Information Act of 1996, as amended 5 U.S.C. 552; Privacy Act of 1974, as amended 5 U.S.C. 552a.

[1] Although pursuant to Section 1017(a)(4)E, of the Consumer Financial Protection Act, Public Law 111–203, the CFPB is not required to comply with OMB-issued guidance, it voluntarily follows OMB privacy-related guidance as a best practice and to facilitate cooperation and collaboration with other agencies.

**PURPOSE(S):**

The information in the system is being collected to enable the CFPB to carry out its responsibilities under the FOIA and the PA, including enabling staff to receive, track, and respond to requests. This requires maintaining documentation gathered during the consideration and disposition process, administering annual reporting requirements, managing FOIA-related fees and calculations, and delivering responsive records.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

These records may be disclosed, consistent with the CFPB's Disclosure of Records and Information Rules, promulgated at 12 CFR 1070 *et seq.,* to:

(1) Appropriate agencies, entities, and persons when: (a) The CFPB suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the CFPB has determined that, as a result of the suspected or confirmed compromise, there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the CFPB or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the CFPB's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(2) Another federal or state agency to (a) permit a decision as to access, amendment or correction of records to be made in consultation with or by that agency, or (b) verify the identity of an individual or the accuracy of information submitted by an individual who has requested access to or amendment or correction of records;

(3) The Office of the President in response to an inquiry from that office made at the request of the subject of a record or a third party on that person's behalf;

(4) Congressional offices in response to an inquiry made at the request of the individual to whom the record pertains;

(5) Contractors, agents, or other authorized individuals performing work on a contract, service, cooperative agreement, job, or other activity on behalf of the CFPB or Federal Government and who have a need to access the information in the performance of their duties or activities;

(6) The DOJ for its use in providing legal advice to the CFPB or in representing the CFPB in a proceeding before a court, adjudicative body, or other administrative body, where the use of such information by the DOJ is deemed by the CFPB to be relevant and necessary to the advice or proceeding, and such proceeding names as a party in interest:

(a) The CFPB;

(b) Any employee of the CFPB in his or her official capacity;

(c) Any employee of the CFPB in his or her individual capacity where DOJ has agreed to represent the employee; or

(d) The United States, where the CFPB determines that litigation is likely to affect the CFPB or any of its components;

(7) A court, magistrate, or administrative tribunal in the course of an administrative proceeding or judicial proceeding, including disclosures to opposing counsel or witnesses (including expert witnesses) in the course of discovery or other pre-hearing exchanges of information, litigation, or settlement negotiations, where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings;

(8) Appropriate agencies, entities, and persons, including but not limited to potential expert witnesses or witnesses in the course of investigations, to the extent necessary to secure information relevant to the investigation; and

(9) Appropriate federal, state, local, foreign, tribal, or self-regulatory organizations or agencies responsible for investigating, prosecuting, enforcing, implementing, issuing, or carrying out a statute, rule, regulation, order, policy, or license if the information may be relevant to a potential violation of civil or criminal law, rule, regulation, order, policy or license.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:**

Paper and electronic records.

**RETRIEVABILITY:**

Records are retrievable by a variety of fields including, but not limited to, the requester's name, the subject matter of request, requestor's organization, FOIA tracking number, and staff member assigned to process the request. Records may also be searched by the address, phone number, fax number, email address of the requesting party, and subject matter of the request, or by some combination thereof.

**SAFEGUARDS:**

Access to electronic records is restricted to authorized personnel who have been issued non-transferrable access codes and passwords. Other records are maintained in locked file cabinets or rooms with access limited to those personnel whose official duties require access.

**RETENTION AND DISPOSAL:**

Computer and paper records will be maintained in accordance with published National Archives and Records Administration Disposition Schedule, Transmittal No. 22, General Records Schedule 14, Information Service Records.

**SYSTEM MANAGER(S) AND ADDRESS:**

Consumer Financial Protection Bureau, Chief FOIA Officer, 1700 G Street NW., Washington, DC 20552.

**NOTIFICATION PROCEDURE:**

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing in the CFPB's Disclosure of Records and Information Rules, promulgated at 12 CFR 1070 *et seq.* Address such requests to: Chief Privacy Officer, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20552.

**RECORD ACCESS PROCEDURES:**

See ''Notification Procedures'' above.

**CONTESTING RECORD PROCEDURES:**

See ''Notification Procedures'' above.

**RECORD SOURCE CATEGORIES:**

Information in this system covers individuals about whom records are maintained; agency staff assigned to help process, consider, and respond to the request, including any appeals; entities filing requests or appeals on behalf of the requestor; other governmental authorities; and entities that are the subjects of the request or appeals.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 2013–18848 Filed 8–2–13; 8:45 am]

BILLING CODE 4810–AM–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID DoD–2012–OS–0060]**

### Submission for OMB Review; Comment Request

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**DATES:** Consideration will be given to all comments received by September 4, 2013.

*Title; Associated Form; and OMB Number:* How Differences in Pedagogical Methods Impact ChalleNGe Program Outcomes; OMB Control Number: 0704–TBD.

*Type of Request:* New.

*Number of Respondents:* 150.

*Responses per Respondent:* 1.

*Annual Responses:* 150.

*Average Burden per Response:* 20 minutes.

*Annual Burden Hours:* 50 hours.

*Needs and Uses:* The information collection requirement is necessary to obtain data on the pedagogical methods of National Guard Youth ChalleNGe program teachers. The data will be used by DoD to evaluate how differences in classroom teaching methods impact program outcomes. The data will also be used to identify those policies and techniques that are most effective so they may be shared program-wide.

*Affected Public:* Individuals or households.

*Frequency:* One time.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Jasmeet Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

*Instructions:* All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

*DOD Clearance Officer:* Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings, WHS/ESD, 4800 Mark Center Drive, 2nd floor, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Dated: July 30, 2013.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2013–18732 Filed 8–2–13; 8:45 am]

BILLING CODE 5001–06–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DoD–2013–OS–0063]**

### Privacy Act of 1974; System of Records

**AGENCY:** Defense Intelligence Agency, DoD.

**ACTION:** Notice to alter a System of Records.

**SUMMARY:** The Defense Intelligence Agency is proposing to alter a system of records 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 September 5, 2013 unless comments are received which result in a contrary determination. Comments will be accepted on or before September 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. Theresa Lowery at Defense Intelligence Agency, DAN 1–C, 600 MacDill Blvd., Washington, DC 20340–0001 or by phone at (202) 231–1193.

**SUPPLEMENTARY INFORMATION:** The Defense Intelligence Agency system 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 **FOR FURTHER INFORMATION CONTACT**.

The proposed system report, as required by 5 U.S.C. 552a of the Privacy Act of 1974, as amended, was submitted on March 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: July 31, 2013.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**LDIA 0011**

**SYSTEM NAME:**

Student Information Files (May 11, 2010, 75 FR 26201)

**CHANGES**

* * * * *

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Delete entry and replace with ''Current and former civilian and military members as students of the National Intelligence University.''

* * * * *

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Delete entry and replace with ''DoD Instruction 3305.01, National Intelligence University, 10 U.S.C. 2161, Joint Military Intelligence College: Academic degrees; American Association of Collegiate Registrars and Admissions Officer, and E.O. 9397 (SSN), as amended.''

**PURPOSE(S):**

Delete entry and replace with ''This information is collected to provide data for managing the student population at the National Intelligence University and for historical documentation.''

* * * * *

**SAFEGUARDS:**

Delete entry and replace with ''Records are stored in office buildings protected by guards, controlled screenings, use of visitor registers, electronic access, and/or locks. 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 IDs are used to control access to the system data, and procedures are in place to deter and detect browsing and unauthorized access. Physical and electronic access are limited to persons responsible for servicing and authorized to use the system.''

* * * * *

**SYSTEM MANAGER(S) AND ADDRESS:**

Delete entry and replace with ''President, National Intelligence University, 200 MacDill Blvd., Washington, DC 20340–0001.''

**NOTIFICATION PROCEDURE:**

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Freedom of Information Act Office (DAN–1A/FOIA), Defense Intelligence Agency, 200 MacDill Blvd., Washington, DC 20340–0001.

Individual should provide their full name, current 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 Freedom of Information Act Office (DAN–1A/FOIA), Defense Intelligence Agency, 200 MacDill Blvd., Washington, DC 20340–0001.

Individual should provide their full name, current address, and telephone number.''

* * * * *

[FR Doc. 2013–18777 Filed 8–2–13; 8:45 am]

BILLING CODE 5001–06–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DoD–2013–OS–0172]**

### Privacy Act of 1974; System of Records

**AGENCY:** Defense Finance and Accounting Service, DoD.

**ACTION:** Notice to amend a System of Records.

**SUMMARY:** The Defense Finance and Accounting Service proposes to alter a system of records, T7040, Work Year and Personnel Cost Reporting, in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The system will be the financial system of record and the single source for consolidated financial information for the Navy civilian employees. It will support the core financial requirements for the Work Year and Personnel Cost Reporting.

**DATES:** This proposed action will be effective on September 5, 2013 unless comments are received which result in a contrary determination. Comments will be accepted on or before September 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 Outlaw, (317) 212–4591.

**SUPPLEMENTARY INFORMATION:** The Defense Finance and Accounting Service 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** or from the Defense Privacy and Civil Liberties Office Web site at *http://dpclo.defense.gov/privacy/SORNs/component/dfas/index.html.*

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: July 31, 2013.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**T7040**

**SYSTEM NAME:**

Work Year and Personnel Cost Reporting (December 17, 2007, 72 FR 71380).

**CHANGES:**

* * * * *

**SYSTEM LOCATION:**

Delete entry and replace with ''Defense Finance and Accounting Service-Cleveland, Information and Technology, Payroll Services, 1240 E. 9th Street, Cleveland, OH 44199–8002.''

* * * * *

**STORAGE:**

Delete entry and replace with ''Electronic storage media.''

**RETRIEVABILITY:**

Delete entry and replace with ''Individuals name, SSN, pay period, organization and/or location.''

**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.''

**RETENTION AND DISPOSAL:**

Delete entry and replace with ''Records are retained for two years then destroyed.''

**SYSTEM MANAGER(S) AND ADDRESS:**

Delete entry and replace with ''Defense Finance and Accounting Service-Cleveland, System Manager, Information and Technology, Payroll Services, 1240 E. 9th Street, Cleveland, OH 44199–8002.''

**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. 2013–18772 Filed 8–2–13; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. Ic13–15–000]**

### Commission Information Collection Activities (FERC–582); Comment Request

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Comment request.

**SUMMARY:** In compliance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(a)(1)(D), the Federal Energy Regulatory Commission (Commission or FERC) is submitting the information collection FERC–582 (Electric Fees, Annual Charges, Waivers, and Exemptions) to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission issued a Notice in the **Federal Register** (78 FR 30912, 5/23/2013) requesting public comments. FERC received no comments on the FERC–582 and is making this notation in its submittal to OMB.

**DATES:** Comments on the collection of information are due by September 4, 2013.

**ADDRESSES:** Comments filed with OMB, identified by the OMB Control No. 1902–0132, should be sent via email to the Office of Information and Regulatory Affairs: *oira_submission@omb.gov.* Attention: Federal Energy Regulatory Commission Desk Officer. The Desk Officer may also be reached via telephone at 202–395–4718.

A copy of the comments should also be sent to the Federal Energy Regulatory Commission, identified by the Docket No. IC13–15–000, by either of the following methods:

- *eFiling at Commission's Web site: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

*Instructions:* All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov*, or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

*Docket:* Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

**FOR FURTHER INFORMATION CONTACT:** Ellen Brown may be reached by email at *DataClearance@FERC.gov,* by telephone at (202) 502–8663, and by fax at (202) 273–0873.

**SUPPLEMENTARY INFORMATION:**

*Title:* Electric Fees, Annual Charges, Waivers, and Exemptions.

*OMB Control No.:* 1902–0132.

*Type of Request:* Three-year extension of the FERC–582 information collection requirements with no changes to the reporting requirements.

*Abstract:* The information required by FERC–582 is contained within 18 Code of Federal Regulations (CFR) part 381 [1] and part 382 [2].

The Commission uses the FERC–582 to implement the statutory provisions of the Independent Offices Appropriation Act of 1952 (IOAA) [3] which authorizes the Commission to establish fees for its services. In addition, the Omnibus Budget Reconciliation Act of 1986 (OBRA) [4] authorizes the Commission to assess and collect fees and annual charges in any fiscal year in amounts equal to all the costs incurred by the Commission in that fiscal year.

To comply with the FERC–582, respondents submit to the Commission the sum of the megawatt-hours (MWh) of all unbundled transmission (including MWh delivered in wheeling transactions and MWh delivered in exchange transactions) and the megawatt-hours of all bundled wholesale power sales (to the extent the bundled wholesale power sales were not separately reported as unbundled transmission). The data collected within the FERC–582 is drawn directly from the FERC Form 1 transmission data. The Commission sums the costs of its electric regulatory program and subtracts all electric regulatory program filing fee collections to determine the total collectible electric regulatory program costs. Then, the Commission uses the data submitted under FERC–582 to determine the total megawatt-hours of transmission of electric energy in interstate commerce.

Respondents (public utilities, power marketers) subject to these annual charges must submit FERC–582 data to the Commission by April 30 of each year.[5] The Commission issues bills for annual charges to respondents. Then, respondents must pay the charges within 45 days of the Commission's issuance of the bill.

Respondents may file requests for waivers and exemptions of fees and charges [6] based on need. The Commission's staff uses the filer's financial information to evaluate the request for a waiver or exemption of the obligation to pay a fee or an annual charge.

*Type of Respondents:* Public utilities and power marketers.

*Estimate of Annual Burden* [7]: The Commission estimates the total Public Reporting Burden for this information collection as:

[1] Title 18 CFR, Sections 381.105, 381.106, 381.108, 381.302, and 381.305.

[2] Title 18 CFR, Sections 382.102, 382.103, 382.105, 382.106, and 382.201.

[3] 31 USC 9701.

[4] 42 USC 7178.

[5] 18 CFR 382.201.

[6] 18 CFR 381 and 382.

[7] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

FERC–582—ELECTRIC FEES; ANNUAL CHARGES; WAIVERS; AND EXEMPTIONS

| | Number of respondents (A) | Annual number of responses per respondent (B) | Annual total number of responses (A) x (B) = (C) | Average annual burden hours per response (D) | Estimated total annual burden (C) x (D) |
|---|---|---|---|---|---|
| FERC–582 | 114 | 1 | 114 | 1 | 114 |

The total estimated annual cost burden to respondents is $7,980 [114 hours * $70 per hour[8] = $7,980]

*Comments:* Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: July 29, 2013.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2013–18745 Filed 8–2–13; 8:45 am]

BILLING CODE 6717–01–P

[8] This is a loaded cost (wages plus benefits) for a full-time employee.

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 2570–031]**

### Ohio Power Company; AEP Generation Resources, Inc.; Notice of Application for Transfer of License, and Soliciting Comments and Motions to Intervene

On July 19, 2013, Ohio Power Company (transferor) and AEP Generation Resources, Inc. (transferee) filed an application for transfer of license for the Racine Hydroelectric Project, FERC No. 2570, located at the U.S. Corps of Engineers Racine Locks and Dam on the Ohio River in Meigs County, Ohio.

Applicants seek Commission approval to transfer the license for the Racine Hydroelectric Project from the transferor to the transferee.

*Applicants' Contact:* For transferor: Mr. Ken McDonough, Assistant General Counsel—Real Estate, American Electric Power Service Corporation, 1 Riverside Plaza, Columbus, OH 43215, telephone (614) 716–1696 and Mr. Frank M. Simms, AER Plant Manager II, American Electric Power Service Corporation, 40 Franklin Road, Roanoke, VA 24011, telephone (540) 985–2875. For transferee: Mr. Jeffrey D. Cross, Deputy General Counsel, American Electric Power Service Corporation, 1 Riverside Plaza, Columbus, OH 43215, (614) 716–1580.

*FERC Contact:* Patricia W. Gillis (202) 502–8735, *patricia.gillis@ferc.gov.*

*Deadline for filing comments and motions to intervene:* 30 days from the issuance date of this notice, by the Commission. Comments and motions to intervene may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1) and the instructions on the Commission's Web site under *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original plus seven copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. More information about this project can be viewed or printed on the eLibrary link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–2570) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2013–18747 Filed 8–2–13; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER10–2401–003; ER10–2423–003; ER10–2404–003; ER10–2406–003.

*Applicants:* Blue Canyon Windpower II LLC, Flat Rock Windpower LLC, Flat Rock Windpower II LLC, High Trail Wind Farm, LLC.

*Description:* Notice of Non-Material Change in Status of Blue Canyon Windpower II LLC, *et al.*

*Filed Date:* 7/26/13.

*Accession Number:* 20130726–5180.

*Comments Due:* 5 p.m. ET 8/16/13.

*Docket Numbers:* ER11–4026–002.

*Applicants:* Eel River Power LLC.

*Description:* Supplement to June 28, 2013 Notice of Change in Status to be effective 9/26/2013.

*Filed Date:* 7/26/13.

*Accession Number:* 20130726–5154.

*Comments Due:* 5 p.m. ET 8/16/13.

*Docket Numbers:* ER12–1320–002.

*Applicants:* Desert View Power, Inc.

*Description:* Supplement to Notice of Change in Status to be effective 9/26/2013.

*Filed Date:* 7/26/13.

*Accession Number:* 20130726–5155.

*Comments Due:* 5 p.m. ET 8/16/13.

*Docket Numbers:* ER13–1514–000.

*Applicants:* Public Service Company of Colorado.

*Description:* 2013–07–25_PSC–TSGT Davis Intm CA 341 Comp Filing to be effective N/A.

*Filed Date:* 7/25/13.

*Accession Number:* 20130725–5107.

*Comments Due:* 5 p.m. ET 8/15/13.

*Docket Numbers:* ER13–1793–001.

*Applicants:* Hazle Spindle, LLC.

*Description:* Hazle Spindle, LLC submits Supplement to July 15, 2013 tariff filing Amendment.

*Filed Date:* 7/26/13.

*Accession Number:* 20130726–5179.

*Comments Due:* 5 p.m. ET 8/16/13.

*Docket Numbers:* ER13–2040–000.

*Applicants:* California Independent System Operator Corporation.

*Description:* California Independent System Operator Corporation submits 2013–07–26 Payment Rescission Rules for Ancillary Services to be effective 11–1–2013.

*Filed Date:* 7/26/13.

*Accession Number:* 20130726–5138.

*Comments Due:* 5 p.m. ET 8/16/13.

*Docket Numbers:* ER13–2041–000.

*Applicants:* Southwest Power Pool, Inc.

*Description:* Southwest Power Pool, Inc. submits 1977R3 Nemaha-Marshall Electric Cooperative NITSA and NOA to be effective 6/27/2013.

*Filed Date:* 7/26/13.

*Accession Number:* 20130726–5146.

*Comments Due:* 5 p.m. ET 8/16/13.

*Docket Numbers:* ER13–2042–000

*Applicants:* Southwest Power Pool, Inc.

*Description:* Southwest Power Pool, Inc. submits 1886R2 Westar Energy, Inc. NITSA and NOA to be effective 6/27/2013.

*Filed Date:* 7/26/13.

*Accession Number:* 20130726–5147.

*Comments Due:* 5 p.m. ET 8/16/13.

*Docket Numbers:* ER13–2043–000.

*Applicants:* South Jersey Energy ISO4, LLC.

*Description:* South Jersey Energy ISO4, LLC submits Market-Based Rates Application to be effective 7/27/2013.

*Filed Date:* 7/26/13.

*Accession Number:* 20130726–5148.

*Comments Due:* 5 p.m. ET 8/16/13.

*Docket Numbers:* ER13–2044–000.

*Applicants:* South Jersey Energy ISO5, LLC.

*Description:* South Jersey Energy ISO5, LLC submits Market-Based Rates Application to be effective 7/27/2013.

*Filed Date:* 7/26/13.

*Accession Number:* 20130726–5149.

*Comments Due:* 5 p.m. ET 8/16/13.

*Docket Numbers:* ER13–2045–000.

*Applicants:* Northern States Power Company, a Wisconsin corporation.

*Description:* 2013–7–29–139–NSPW–CAPX–LaX–WI–CMA–AGMT—Filing to be effective 12/21/2012.

*Filed Date:* 7/29/13.

*Accession Number:* 20130729–5029.

*Comments Due:* 5 p.m. ET 8/19/13.

*Docket Numbers:* ER13–2046–000.

*Applicants:* Northern States Power Company, a Wisconsin corporation.

*Description:* Northern States Power Company, a Wisconsin corporation submits tariff filing per 35.13(a)(2)(iii: 2013–7–29–140–NSPW–CAPX–LaX–WI–OMA–AGMT—Filing to be effective 12/21/2012.

*Filed Date:* 7/29/13.

*Accession Number:* 20130729–5031.

*Comments Due:* 5 p.m. ET 8/19/13.

*Docket Numbers:* ER13–2047–000.

*Applicants:* Northern States Power Company, a Minnesota corporation.

*Description:* 2013–7–29_560–NSP–CAPX–LAX–MN–CMA—Concur-Filing to be effective 12/21/2012.

*Filed Date:* 7/29/13.

*Accession Number:* 20130729–5047.

*Comments Due:* 5 p.m. ET 8/19/13.

Take notice that the Commission received the following land acquisition reports:

*Docket Numbers:* LA13–2–000.

*Applicants:* Arizona Solar One LLC, Mojave Solar LLC.

*Description:* Quarterly Land Acquisition Report of Arizona Solar One LLC, *et al.*

*Filed Date:* 7/29/13.

*Accession Number:* 20130729–5026.

*Comments Due:* 5 p.m. ET 8/19/13.

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: July 29, 2013.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2013–18781 Filed 8–2–13; 8:45 am]

**BILLING CODE 6717–01–P**

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## 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:* RP13–1115–000.

*Applicants:* TWP Pipeline LLC.

*Description:* TWP Pipeline ACA Filing to be effective 10/1/2013.

*Filed Date:* 7/29/13.

*Accession Number:* 20130729–5082.

*Comments Due:* 5 p.m. ET 8/12/13.

*Docket Numbers:* RP13–1116–000.

*Applicants:* Kinetica Energy Express, LLC.

*Description:* Kinetica Energy Express LLC—FERC Gas Tariff—Baseline Filing to be effective 12/31/9998.

*Filed Date:* 7/29/13.

*Accession Number:* 20130729–5137.

*Comments Due:* 5 p.m. ET 8/12/13.

*Docket Numbers:* RP13–1117–000.

*Applicants:* CenterPoint Energy—Mississippi River T.

*Description:* ACA Order 776 Compliance Filing to be effective 10/1/2013.

*Filed Date:* 7/29/13.

*Accession Number:* 20130729–5154.

*Comments Due:* 5 p.m. ET 8/12/13.

*Docket Numbers:* RP13–1118–000.

*Applicants:* Rendezvous Pipeline Company, LLC.

*Description:* Rendezvous ACA Filing to be effective 10/1/2013.

*Filed Date:* 7/29/13.

*Accession Number:* 20130729–5166.

*Comments Due:* 5 p.m. ET 8/12/13.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

**Filings in Existing Proceedings.**

*Docket Numbers:* RP10–1403–003.

*Applicants:* Sabine Pipe Line LLC.

*Description:* Sabine Sections 5 and 6.1 Rates and FT to be effective 10/1/2013.

*Filed Date:* 7/29/13.

*Accession Number:* 20130729–5097.

*Comments Due:* 5 p.m. ET 8/12/13.

*Docket Numbers:* RP13–308–001.

*Applicants:* Chandeleur Pipe Line Company.

*Description:* Chandeleur Section 5 Statement of Rates to be effective 10/1/2013.

*Filed Date:* 7/29/13.

*Accession Number:* 20130729–5096.

*Comments Due:* 5 p.m. ET 8/12/13.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing

requirements, interventions, protests, 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 July 30, 2013.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2013–18806 Filed 8–2–13; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP13–509–000]**

### DCP Midstream, LP; Notice of Intent To Prepare an Environmental Assessment for the Proposed Lucerne Residue Pipeline Project and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Lucerne Residue Pipeline Project involving construction and operation of facilities by DCP Midstream, LP (DCP) in Weld County, Colorado. The Commission will use this EA in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine what issues they need to evaluate in the EA. Please note that the scoping period will close on August 28, 2013.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

DCP provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?''. This fact sheet addresses a number of typically-asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC Web site (*www.ferc.gov*).

#### Summary of the Proposed Project

DCP proposes to construct and operate 7.6 miles of 16-inch-diameter pipeline referred to as the Lucerne Residue Pipeline and four aboveground facilities in Weld County, Colorado. DCP is planning to construct a new natural gas processing plant (Lucerne II Gas Plant) adjacent to an existing plant (Lucerne Gas Plant). This gas, along with residue gas from the Lucerne Gas Plant, would be transported to an interconnection with an interstate pipeline via a proposed (Lucerne Residue Pipeline). This new plant would be able to process 230 million cubic feet per day (MMcf/d) of gas gathered from wellhead receipt points. DCP states that there is new development in the Niobrara Shale area of the Denver-Julesblurg Basin and DCP proposes to transport its own gas from the Lucerne Plants into the interstate natural gas market for sale to third parties. Without the pipeline, DCP would not be able to transport its gas to the interconnect with Colorado Interstate Gas Company.

The Lucerne Residue Pipeline Project would consist of the following facilities:

- 7.6 miles of 16-inch-diameter pipeline; and
- Four above ground facilities at separate locations, including a pig launcher [1] and receiver (both collocated with valves) and two additional valves.

The general location of the project facilities is shown in appendix 1.[2]

#### Land Requirements for Construction

Construction of the proposed facilities would disturb about 74.2 acres of land for the aboveground facilities and the pipeline. Following construction, DCP would maintain about 28.1 acres for permanent operation of the project's facilities; the remaining acreage would be restored and revert to former uses. The proposed pipeline route parallels existing pipeline rights-of-way for its entire length.

#### The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [3] to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We will consider all filed comments during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- land use;
- water resources, fisheries, and wetlands;
- cultural resources;
- vegetation and wildlife;
- air quality and noise;
- endangered and threatened species; and
- public safety.

We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present our independent analysis of the issues. The EA will be available in the public record through eLibrary. Depending on the comments received during the scoping process, we may also publish and distribute the EA to the public for an allotted comment period. We will consider all comments on the EA before making our recommendations to the Commission. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section beginning on page 5.

[1] A ''pig'' is a tool that the pipeline company inserts into and pushes through the pipeline for cleaning the pipeline, conducting internal inspections, or other purposes.

[2] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[3] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate with us in the preparation of the EA.[4] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

**Consultations Under Section 106 of the National Historic Preservation Act**

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with applicable State Historic Preservation Office (SHPO), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[5] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO as the project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

**Currently Identified Environmental Issues**

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by DCP. This preliminary list of issues may be changed based on your comments and our analysis.

- The project may affect cultural resources;
- the project may affect groundwater wells;
- the project any affect federally endangered or threatened species; and
- noise impacts may occur at noise sensitive areas from horizontal directional drilling activities.

[4] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, § 1501.6.

[5] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

**Public Participation**

You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before August 28, 2013.

For your convenience, there are three methods which you can use to submit your comments to the Commission. In all instances please reference the project docket number (CP13–509–000) with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.*

(1) You can file your comments electronically using the *eComment* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* This is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You can file your comments electronically using the *eFiling* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.*'' You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

**Environmental Mailing List**

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If we publish and distribute the EA, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (appendix 2).

**Becoming an Intervenor**

In addition to involvement in the EA scoping process, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are in the User's Guide under the ''e-filing'' link on the Commission's Web site.

**Additional Information**

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site at *www.ferc.gov* using the ''eLibrary'' link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits in the Docket Number field (i.e., CP13–509). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's

calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: July 29, 2013.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2013–18746 Filed 8–2–13; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER13–2044–000]**

### South Jersey Energy ISO5, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding, of South Jersey Energy ISO5, LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and *Procedure* (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability is August 19, 2013.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 30, 2013.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2013–18783 Filed 8–2–13; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER13–2050–000]**

### Solar Partners VIII, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding, of Solar Partners VIII, LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and *Procedure* (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability is August 8, 2013.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 30, 2013.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2013–18784 Filed 8–2–13; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER13–2043–000]**

### South Jersey Energy ISO4, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding, of South Jersey Energy ISO4, LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and *Procedure* (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and

assumptions of liability is August 19, 2013.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 30, 2013.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2013–18782 Filed 8–2–13; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL 9842–9]**

## National Advisory Council for Environmental Policy and Technology

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

**ACTION:** Request for nominations to the National Advisory Council for Environmental Policy and Technology (NACEPT).

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) invites nominations from a diverse range of qualified candidates representing tribal governments and communities to be considered for appointment to the National Advisory Council for Environmental Policy and Technology (NACEPT). Vacancies are anticipated to be filled by February, 2014. Sources in addition to this **Federal Register** Notice may be utilized in the solicitation of nominees.

*Background:* NACEPT is a federal advisory committee chartered under the Federal Advisory Committee Act (FACA), Public Law 92–463. EPA established NACEPT in 1988 to provide advice to the EPA Administrator on a broad range of environmental policy, management and technology issues. Members serve as representatives from academia, industry, non-governmental organizations, and state, local, and tribal governments. Members are appointed by the EPA Administrator for two year terms. The Council usually meets 2–3 times annually face-to-face or via video/teleconference and the average workload for the members is approximately 10 to 15 hours per month. Members serve on the Council in a voluntary capacity. However, EPA provides reimbursement for travel and incidental expenses associated with official government business. EPA is seeking nominations from candidates representing tribal governments/communities. Within these sectors, EPA is seeking nominees with knowledge in community sustainability, public health and health disparities, land use and sustainable development, green jobs and economic initiatives, energy, and environmental financing.

Nominees will be considered according to the mandates of FACA, which requires committees to maintain diversity across a broad range of constituencies, sectors, and groups. EPA values and welcomes diversity. In an effort to obtain nominations of diverse candidates, EPA encourages nominations of women and men of all racial and ethnic groups, as well as geographic locale.

The following criteria will be used to evaluate nominees:

—Professional knowledge of environmental policy, management, and technology issues, particularly issues dealing with all facets of sustainability.

—Demonstrated ability to assess and analyze environmental challenges with objectivity and integrity.

—Middle/Senior-level leadership experience that fills a current need on the Council.

—Excellent interpersonal, oral and written communication, and consensus-building skills.

—Ability to volunteer approximately 10 to 15 hours per month to the Council's activities, including participation on video/teleconference meetings and preparation of text for Council reports and advice letters.

If you are interested in serving on NACEPT, we will need the following items to process your nomination package:

Nominations must include a brief statement of interest, resume, curriculum vitae, or a short biography (no more than two paragraphs) describing your professional and educational qualifications, including a list of relevant activities and any current or previous service on advisory committees. The statement of interest, resume, curriculum vitae, or short biography should include the candidate's name, name and address of current organization, position title, email address, and daytime telephone number(s). In preparing your statement of interest, please describe how your background, knowledge, and experience will bring value to the work of the committee, and how these qualifications would contribute to the overall diversity of the Council. Also, be sure to describe any previous involvement with the Agency through employment, grant funding and/or contracting sources. Candidates must also provide a letter of recommendation, authorizing the nominee to represent the points of view of a specific entity or group (such as an industry sector, state or local government, environmental groups, etc.) that has an interest in the subject matter under the committee's charge.

The nomination package should also include a separate recommendation letter from a third party supporting your nomination. This letter should describe how your background and skills would enrich the quality of the Council's work. Please note that interested candidates may self-nominate. However, be advised that federal registered lobbyist are not permitted to serve on advisory boards.

Anyone interested in being considered for nomination is encouraged to submit a nomination (application) package before the deadline of September 6, 2013. To help the Agency in evaluating the effectiveness of its outreach efforts, please tell us how you learned of this opportunity. Please be aware that EPA's policy is that, unless otherwise prescribed by statute, members generally are appointed to two year terms.

Please submit nominations to: Mark Joyce, Acting Designated Federal Officer, Office of Federal Advisory Committee Management and Outreach, U.S. EPA (1601M), 1200 Pennsylvania Avenue NW., Washington, DC 20460.

To expedite the process, it is preferable to email nominations with subject line ''NACEPT Membership

Recruitment 2014'' to *joyce.mark@epa.gov.*

**FOR FURTHER INFORMATION CONTACT:** Mark Joyce, Acting Designated Federal Officer, U.S. EPA; telephone (202) 564–2130; fax (202) 564–8129; email *joyce.mark@epa.gov.*

Dated: July 25, 2013.

**Mark Joyce,**

*Acting Designated Federal Officer.*

[FR Doc. 2013–18692 Filed 8–2–13; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9843–3; CERCLA–04–2013–3759]**

### Ore Knob Mine Superfund Site; Laurel Springs, Ashe County, North Carolina; Notice of Settlement

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

**ACTION:** Notice of Settlement.

**SUMMARY:** Under 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency has entered into a settlement with Herbert N. Francis concerning the Ore Knob Mine Superfund Site located in Laurel Springs, Ashe County, North Carolina. The settlement addresses cost incurred by the agency in conducting a fund lead Removal.

**DATES:** The Agency will consider public comments on the settlement until September 4, 2013. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

**ADDRESSES:** Copies of the settlement are available from EPA's Environmental Protection Specialist, Ms. Paula V. Painter. Submit your comments by site name ''Ore Knob Mine Superfund Site'' by one of the following methods:

- *www.epa.gov/region4/superfund/programs/enforcement/enforcement.html.*
- Email. *Painter.Paula@epa.gov.*
- U.S. Environmental Protection Agency, Attn: Paula V. Painter, Superfund Division, 61 Forsyth Street SW., Atlanta, Georgia 30303.

**FOR FURTHER INFORMATION CONTACT:** Paula V. Painter at 404/562–8887.

Dated: April 17, 2013.

**Anita L. Davis,**

*Chief, Superfund Enforcement & Information Management Branch, Superfund Division.*

[FR Doc. 2013–18871 Filed 8–2–13; 8:45 am]

BILLING CODE 6560–50–P

## EXPORT-IMPORT BANK OF THE UNITED STATES

### Intent To Conduct a Detailed Economic Impact Analysis

This notice is to inform the public that the Export-Import Bank of the United States has received an application for a loan guarantee to support the export of U.S.-manufactured Boeing 787 wide-body passenger aircraft to an airline in China, which will provide passenger services. The specific amount of the loan guarantee, the value of the transaction, and the amount of new foreign production capacity are not included here because they are proprietary information. However, the total value of the transaction is in excess of $200 million and the amount of increased wide-body seat capacity resulting from these aircraft and possibly other U.S.-manufactured wide-body passenger aircraft could be 1% or more of comparable wide-body seat capacity within the U.S. airline industry. The aircraft in this transaction could enable passenger route service within China and from China to various regional and international destinations, potentially including the United States.

Interested parties may submit comments on this transaction by email to *economic.impact@exim.gov* or by mail to 811 Vermont Avenue NW., Room 442, Washington, DC 20571, within 14 days of the date this notice appears in the **Federal Register**.

**James Cruse,**

*Senior Vice President, Policy and Planning.*

[FR Doc. 2013–18809 Filed 8–2–13; 8:45 am]

BILLING CODE 6690–01–P

## FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

### Sunshine Act Meetings

**TIME AND DATE:** 10:00 a.m. (TELEPHONIC Eastern Time) August 9, 2013.

**PLACE:** 10th Floor Board Meeting Room, 77 K Street NE., Washington, DC 20002.

**STATUS:** Parts will be open to the public and parts closed to the public

**MATTERS TO BE CONSIDERED:**

*Parts Open to the Public*

1. Approval of the Minutes of the July 22, 2013 Board Member Meeting.
2. Thrift Savings Plan Activity Reports by the Executive Director.
   a. Monthly Participant Activity Report.
   b. Monthly Investment Policy Report.
   c. Legislative Report.

*Parts Closed to the Public*

1. Procurement.

**CONTACT PERSON FOR MORE INFORMATION:** Kimberly Weaver, Director, Office of External Affairs, (202) 942–1640.

Dated: August 1, 2013.

**Megan Grumbine,**

*Acting Secretary, Federal Retirement Thrift Investment Board.*

[FR Doc. 2013–18924 Filed 8–1–13; 4:15 pm]

BILLING CODE 6760–01–P

## FEDERAL TRADE COMMISSION

### Agency Information Collection Activities; Proposed Collection; Comment Request

**AGENCY:** Federal Trade Commission (FTC or Commission).

**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 November 30, 2016, the current PRA clearance for information collection requirements contained in its Consumer Product Warranty Rule. That clearance expires on November 30, 2013.

**DATES:** Comments must be received on or before October 4, 2013.

**ADDRESSES:** Interested parties may file a comment online or on paper by following the instructions in the Request for Comments part of the **SUPPLEMENTARY INFORMATION** section below.

**FOR FURTHER INFORMATION CONTACT:** Requests for copies of the collection of information and supporting documentation should be addressed to Svetlana Gans, Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, Room H–286, 600 Pennsylvania Ave. NW., Washington, DC 20580, (202) 326–3708.

**SUPPLEMENTARY INFORMATION:**

**Proposed Information Collection Activities**

Under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501–3520, federal agencies must get OMB approval for each collection of information they conduct, sponsor, or require. ''Collection of information'' means agency requests or requirements to submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing PRA clearance for the information collection requirements associated with the Commission's Rule Concerning Disclosure of Written Consumer Product Warranty Terms and Conditions (the Consumer Product Warranty Rule or Warranty Rule), 16 CFR 701 (OMB Control Number 3084–0111).

The FTC invites comments 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. All comments must be received on or before October 4, 2013.

The Warranty Rule is one of three rules [1] that the FTC implemented pursuant to requirements of the Magnuson-Moss Warranty Act, 15 U.S.C. 2301 *et seq.* (Warranty Act or Act).[2] The Warranty Rule specifies the information that must appear in a written warranty on a consumer product [3] costing more than $15. The Rule tracks Section 102(a) of the Warranty Act,[4] specifying information that must appear in the written warranty and, for certain disclosures, mandates the exact language that must be used.[5] Neither the Warranty Rule nor the Act requires that a manufacturer or retailer warrant a consumer product in writing, but if they choose to do so, the warranty must comply with the Rule.

**Warranty Rule Burden Statement**

*Total annual hours burden:* 116,128 hours.

In its 2010 submission to OMB, the FTC estimated that the information collection burden of including the disclosures required by the Warranty Rule was approximately 127,000 hours per year. Although the Rule's information collection requirements have not changed, this estimate decreases the number of manufacturers subject to the Rule based on recent Census data. Further, because most warrantors would continue to disclose this information even if there were no statute or rule requiring them to do so, staff's estimates likely overstate the PRA-related burden attributable to the Rule. Moreover, the Warranty Rule has been in effect since 1976, and warrantors have long since modified their warranties to include the information the Rule requires.

Based on conversations with various warrantors' representatives over the years, staff has concluded that eight hours per year is a reasonable estimate of warrantors' PRA-related burden attributable to the Warranty Rule.[6] This estimate takes into account ensuring that new warranties and changes to existing warranties comply with the Rule. Based on recent Census data, staff now estimates that there are 14,516 manufacturers covered by the Rule.[7] This results in an annual burden estimate of approximately 116,128 hours (14,516 manufacturers × 8 hours of burden per year).

*Total annual labor costs:* $15,710,000, rounded to the nearest thousand.

Labor costs are derived by applying appropriate hourly cost figures to the burden hours described above. The work required to comply with the Warranty Rule—ensuring that new warranties and changes to existing warranties comply with the Rule—requires a mix of legal analysis (50%), legal support (paralegals) (25%) and clerical help (25%). Staff estimates that half of the total burden hours (58,064 hours) requires legal analysis at an average hourly wage of $250 for legal professionals,[8] resulting in a labor cost of $14,516,000. Assuming that 25% of the total burden hours requires legal support at the average hourly wage of $24.57, and that the remaining 25% requires clerical work at an average hourly wage of $16.54; the resulting labor cost is approximately $1,193,505 ($713,316 + $480,189). Thus, the total annual labor cost is approximately $15,709,505 ($14,516,000 for legal professionals + $713,316 for legal support + $480,189 for clerical workers).

*Total annual capital or other non-labor costs:* $0.

The Rule imposes no appreciable current capital or start-up costs. As stated above, warrantors have already modified their warranties to include the information the Rule requires. Rule compliance does not require the use of any capital goods, other than ordinary office equipment, which providers would already have available for general business use.

**Request for Comments**

You can file a comment online or on paper. Write ''Warranty Rules: Paperwork Comment, FTC File No. P044403'' on your comment. Your comment—including your name and your state—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 does not 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 does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which is . . . privileged or confidential,'' as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR

[1] The other two rules relate to the pre-sale availability of warranty terms and minimum standards for informal dispute settlement mechanisms that are incorporated into a written warranty.

[2] 40 FR 60168 (Dec. 31, 1975).

[3] The definition of *consumer product* excludes products purchased solely for commercial or industrial use. 16 CFR 701.1(b).

[4] 15 U.S.C. 2302(a).

[5] 40 FR 60168, 60169–60170.

[6] FTC staff has previously contacted two manufacturing associations—the Association of Home Appliance Manufacturers and the National Association of Manufacturers—and we have not located additional data that further clarifies this figure.

[7] Because some manufacturers likely make products that are not priced above $15 or not intended for household use—and thus would not be subject to the Rule—this figure is likely an overstatement.

[8] Staff has derived an hourly wage rate for legal professionals based upon industry knowledge. The wage rates for legal support workers and for clerical support used in this Notice are based on recent data from the Bureau of Labor Statistics National Compensation Survey.

4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper 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, the Commission encourages you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/consumerwarrantypra*, by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Warranty Rules: Paperwork Comment, FTC File No. P044403'' 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 October 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.*

**David C. Shonka,**

*Principal Deputy General Counsel.*

[FR Doc. 2013–18718 Filed 8–2–13; 8:45 am]

BILLING CODE 6750–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Fee Schedule for Reference Biological Standards and Biological Preparations

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** General notice.

**SUMMARY:** The Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS) announces that HHS/CDC has reviewed and updated its fee schedule for reference biological standards and biological preparations required by OMB Circular A–25, User Charges. This notice also announces current contact information to obtain information on the availability of these products and the fees for these products.

**DATES:** These fees are effective August 5, 2013.

**FOR FURTHER INFORMATION CONTACT:** To obtain information on the current inventory of reference biological standards and biological preparations and the current fee schedule, please contact the Division of Scientific Resources, Centers for Disease Control and Prevention, 1600 Clifton Road NE., Mailstop C–17, Atlanta, Georgia 30333; telephone 404–639–3466. Someone will be available to answer your inquiry between 8:00 a.m. and 4:30 p.m. Eastern Time, Monday through Friday, except on Federal holidays.

**SUPPLEMENTARY INFORMATION:** On July 22, 2013 HHS/CDC published a Direct Final Rule (DFR) titled ''Distribution of Reference Biological Standards and Biological Preparations (78 FR 43817). In the DFR, HHS/CDC updated the agency name, location, and contact information for persons interested in obtaining reference biological standards and biological preparations. Today, HHS/CDC is publishing a General Notice to inform the public that HHS/CDC has reviewed and updated its fee schedule per the requirements in OMB Circular A–25 (User Charges) and to provide contact information to obtain a current inventory of products and an up-to-date fee schedule of charges (see **FOR FURTHER INFORMATION CONTACT**). HHS/CDC is not seeking additional comment on the DFR through this notice.

OMB Circular A–25 (User Charges) requires that agencies review user charges for agency programs every two years. This review should include any adjustment to reflect changes in costs or market value. HHS/CDC has conducted a review of the fees charged for reference biological standards and biological preparations. Based on this review, some reagents are being removed from our inventory because they are obsolete. No prices have increased or decreased at this time.

HHS/CDC prepares reference biological standards and biological preparations under the authority of 42 CFR Part 7. These regulations describe how private entities may obtain reference biological standards and biological preparations from HHS/CDC and how charges for these standards and preparations are determined. Persons interested in these products should contact the Division of Scientific Resources, Centers for Disease Control and Prevention, 1600 Clifton Road NE., Mailstop C–17, Atlanta, Georgia 30333; telephone 404–639–3466, for the current inventory and fee schedule. Due to the changing inventory of the unique biological standards or biological preparations, some of which are prepared only upon request, it is best to contact HHS/CDC to determine the availability of a particular product.

Dated: July 29, 2013.

**J. Ronald Campbell,**

*Director, Division of Executive Secretariat, Centers for Disease Control and Prevention.*

[FR Doc. 2013–18767 Filed 8–2–13; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Office for State, Tribal, Local and Territorial Support (OSTLTS)

**Correction**

A notice was published in the **Federal Register** on June 21, 2013, Volume 78, Number 120, Pages 37541–37542 to announce the Tribal Advisory Committee Meeting and 10th Biannual Tribal Consultation Session planned for August 12–13, 2013, in Atlanta, Georgia. This notice is being published to announce that the Tribal Advisory Committee Meeting and 10th Biannual Tribal Consultation Session have been postponed. The meetings are anticipated to be rescheduled for fall 2013. The dates will be announced as soon as they are determined. Please refer to the Tribal Support Web site for updates: *http://www.cdc.gov/tribal/.*

*Contact Person for More Information:* April R. Taylor, Public Health Analyst, CDC/OSTLTS, via mail to 4770 Buford Highway NE., MS E–70, Atlanta,

Georgia 30341 or email to *ARTaylor@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.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 2013–18788 Filed 8–2–13; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[Docket No. CDC–2013–0014]**

### Preventing Skin Cancer Through Reduction of UV Exposure

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice with comment period.

**SUMMARY:** The Centers for Disease Control and Prevention (CDC) in the Department of Health and Human Services (HHS) announces the opening of a docket to obtain information from the public on preventing skin cancer through the reduction of UV exposure. The information obtained will be used for an anticipated Office of the Surgeon General response to the public health problem of skin cancer.

**DATES:** Written comments must be received on or before September 4, 2013.

**ADDRESSES:** You may submit comments, identified by docket number CDC–2013–0014 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Meg Watson, MPH, Epidemiologist, Epidemiology and Applied Research Branch, Division of Cancer Prevention and Control, Centers for Disease Control and Prevention, 4770 Buford Highway NE., MS F–76, Atlanta, GA 30341–3717.

*Instructions:* All submissions received must include the agency name and docket number or RIN. All relevant comments received will be posted without change to *http://regulations.gov*, including any personal information provided. For access to the docket to read background documents or comments received, go to *http://www.regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** Meg Watson, Epidemiologist, Epidemiology and Applied Research Branch, Division of Cancer Prevention and Control, Centers for Disease Control and Prevention, 4770 Buford Highway NE., MS F–76, Atlanta, GA 30341–3717, by telephone at (770) 488–4226 or by email at *FRNskincancer@cdc.gov*.

**SUPPLEMENTARY INFORMATION:** *Scope of the problem:* Skin cancer rates, including rates of melanoma, are increasing in the United States and worldwide. An estimated 3.7 million cases of basal and squamous cell carcinomas and about 60,000 cases of melanoma are diagnosed in the U.S. annually, with approximately 8,500 deaths from melanoma. Melanoma, which causes more deaths than other types of skin cancer, is one of the most commonly diagnosed cancers among U.S. adolescents and young adults. Skin cancer also poses a significant economic burden in the U.S. The treatment of melanoma and non-melanoma skin cancer costs an estimated $1.7 billion each year, while costs due to low productivity are estimated to be $3.8 billion.

A majority of skin cancers are caused by exposure to ultraviolet (UV) radiation from the sun or from indoor tanning devices, and are therefore preventable. Evidence clearly links exposure to UV radiation and a history of sunburn (indicating both intensity of UV exposure and skin sensitivity to radiation) to an increased risk of skin cancer. More than one-third of U.S. adults aged 18 and older report experiencing one or more sunburns in the past 12 months, and sunburn is even more common among younger adults. Indoor tanning is also common among adults, with the highest use among non-Hispanic white women aged 18–21 years (31.8%) and aged 22–25 years (29.6%). Among white adults who reported indoor tanning, 57.7% of women and 40.0% of men reported indoor tanning ≥10 times in the past 12 months. Among U.S. high school students, 13.3% have indoor tanned in the past 12 months, with much higher rates among girls and non-Hispanic whites. Furthermore, only 10.8% of U.S. high school students report wearing sunscreen with SPF of 15 or higher most of the time or always when outside for more than one hour on a sunny day.

*Approach:* HHS/CDC provides leadership for nationwide efforts to reduce illness and death caused by skin cancer, which is the most common form of cancer in the U.S. HHS/CDC also conducts surveillance of melanoma and skin cancer risk-related behaviors, conducts applied research and evaluation, and translates and disseminates evidence-based information on how to reduce the burden of skin cancer in the population. Consistent with these activities, HHS/CDC is assisting the Office of the Surgeon General in the Department of Health and Human Services with an anticipated response to the public health issue of skin cancer, including deadly melanoma. The intent of this activity is to identify opportunities and actions that can be taken by all levels of government, civic organizations, health care providers, educational institutions, worksites, industry, service providers, individuals and others to reduce exposure to UV radiation throughout the nation by raising awareness of proper sun protection practices, providing or allowing for use of shade structures, clothing, and sunscreens where appropriate, and changing social norms regarding tanning and having tanned skin. Expectations are that a review of the information collected will lead to the issuance of the Office of Surgeon General publication.

We invite comments and information on environmental or systems strategies; interventions that reduce exposure to UV radiation; and national-, state-, tribal-, territorial-, community-, organizational-, and individual-level actions.

*Areas of focus:* Use of sun protection is low, while excessive sun exposure, indoor tanning, and sunburn are common. HHS/CDC and the Office of the Surgeon General are interested in receiving information on the following topics:

(1) Barriers to reducing UV exposure from the sun and from indoor tanning devices, and;

(2) Evidence-based strategies to reduce UV exposure in the population by increasing the use of sun protection and reducing tanning behaviors.

Dated: July 29, 2013.

**J. Ronald Campbell,**

*Director, Division of Executive Secretariat, Centers for Disease Control and Prevention.*

[FR Doc. 2013–18766 Filed 8–2–13; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2013–P–0241]**

### Determination That CYTOXAN (Cyclophosphamide) for Injection Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined that CYTOXAN (cyclophosphamide) for Injection (lyophilized formulations), 100 milligrams (mg)/vial, 200 mg/vial, 500 mg/vial, 1 gram (g)/vial, and 2 g/vial, and CYTOXAN (cyclophosphamide) for Injection (non-lyophilized formulations), 100 mg/vial and 200 mg/vial, were not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for these products, if all other legal and regulatory requirements are met.

**FOR FURTHER INFORMATION CONTACT:** Christine Kirk, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6280, Silver Spring, MD 20993–0002, 301–796–2465.

**SUPPLEMENTARY INFORMATION:** In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is known generally as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale, but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

CYTOXAN (cyclophosphamide) for Injection (lyophilized formulations), 100 mg/vial, 200 mg/vial, 500 mg/vial, 1 g/vial, and 2 g/vial, and CYTOXAN (cyclophosphamide) for Injection, 100 mg/vial and 200 mg/vial, are the subject of NDA 012142, held by Baxter Healthcare, and initially approved on November 16, 1959. CYTOXAN for Injection is an alkylating drug product indicated for treatment of malignant lymphomas, Hodgkin's disease, lymphocytic lymphoma, mixed-cell type lymphoma, histiocytic lymphoma, Burkitt's lymphoma, multiple myeloma, leukemias, mycosis fungoides, neuroblastoma, adenocarcinoma of ovary, retinoblastoma, breast carcinoma, and minimal change nephrotic syndrome in pediatric patients.

CYTOXAN (cyclophosphamide) for Injection (lyophilized formulations), 100 mg/vial, 200 mg/vial, 500 mg/vial, 1 g/vial, and 2 g/vial, and CYTOXAN (cyclophosphamide) for Injection, 100 mg/vial and 200 mg/vial, are currently listed in the ''Discontinued Drug Product List'' section of the Orange Book.

Foley & Lardner LLP submitted a citizen petition dated February 26, 2013 (Docket No. FDA–2013–P–0241), under 21 CFR 10.30, requesting that the Agency determine whether CYTOXAN (cyclophosphamide) for Injection (lyophilized formulations), 100 mg/vial, 200 mg/vial, 500 mg/vial, 1 g/vial, and 2 g/vial, were voluntarily withdrawn or withheld from sale for reasons of safety or effectiveness. Although the citizen petition did not address the non-lyophilized 100 mg/vial and 200 mg/vial formulations, those strengths have also been discontinued. On our own initiative, we have also determined whether those strengths were withdrawn for safety or effectiveness reasons.

After considering the citizen petition and reviewing Agency records and based on the information we have at this time, FDA has determined under § 314.161 that CYTOXAN (cyclophosphamide) for Injection (lyophilized formulations), 100mg/vial, 200mg/vial, 500 mg/vial, 1 g/vial, and 2 g/vial, and CYTOXAN (cyclophosphamide) for Injection, 100 mg/vial and 200 mg/vial, were not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that CYTOXAN (cyclophosphamide) for Injection (lyophilized formulations), 100 mg/vial, 200 mg/vial, 500 mg/vial, 1 g/vial, and 2 g/vial, or CYTOXAN (cyclophosphamide) for Injection, 100 mg/vial and 200 mg/vial, were withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of CYTOXAN (cyclophosphamide) for Injection (lyophilized formulations), 100 mg/vial, 200 mg/vial, 500 mg/vial, 1 g/vial, and 2 g/vial, and CYTOXAN (cyclophosphamide) for Injection, 100 mg/vial and 200 mg/vial, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have found no information that would indicate that these products were withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list CYTOXAN (cyclophosphamide) for Injection (lyophilized formulations), 100 mg/vial, 200 mg/vial, 500 mg/vial, 1 g/vial, and 2 g/vial, and CYTOXAN (cyclophosphamide) for Injection, 100 mg/vial and 200 mg/vial, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to CYTOXAN (cyclophosphamide) for Injection (lyophilized formulations), 100 mg/vial, 200 mg/vial, 500 mg/vial, 1 g/vial, and 2 g/vial, or CYTOXAN (cyclophosphamide) for Injection, 100 mg/vial and 200 mg/vial, may be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for these drug products should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: July 30, 2013.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2013–18731 Filed 8–2–13; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Privacy Act of 1974; Report of an Altered System of Records

**AGENCY:** Health Resources and Services Administration, Department of Health and Human Services (HHS).

**ACTION:** Notice of an altered system of records and deletion of a related system.

**SUMMARY:** In accordance with the requirements of the Privacy Act of 1974 (5 U.S.C. 552a), the Health Resources and Services Administration (HRSA) is publishing notice of a proposal to alter the system of records entitled and numbered National Practitioner Data Bank for Adverse Information on Physicians and other Health Care Practitioners (NPDB), #09–15–0054, to include information covered under a related system of records, the Healthcare Integrity and Protection Data Bank (HIPDB), SORN 09–90–0103, which is being deleted. The NPDB SORN was last published March 30, 2012 (77 FR 19295). The proposed alterations to the NPDB SORN include revising the Purpose section, expanding the Categories of Individuals, Categories of Records, and Record Sources Categories sections, revising two existing routine uses and adding one new routine use, deleting three unnecessary routine uses, and updating the Authority and Policies and Practices sections.

**DATES:** HRSA filed an altered system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Homeland Security and Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on July 17, 2013. To ensure all parties have adequate time in which to comment, the system alterations proposed in this notice will become effective 30 days from the publication of this notice in the **Federal Register** or 40 days from the date the altered system report was submitted to OMB and Congress, whichever is later, unless HRSA receives comments that require alterations to this notice. The HIPDB SORN will be considered deleted when the system alterations proposed in this notice are effective.

**ADDRESSES:** Please address comments to Associate Administrator, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 9–05 Rockville, Maryland 20857. Comments received will be available for inspection at this same address from 9:00 a.m. to 3:00 p.m. (Eastern Standard Time Zone), Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Director, Division of Practitioner Data Banks, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8–103, Rockville, Maryland 20857; Telephone: (301) 443–2300. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:**

#### I. Merger of HIPDB Into NPDB

The NPDB and the HIPDB were authorized by separate laws to improve the quality of health care and to combat fraud and abuse, respectively. Title IV of the Health Care Quality Improvement Act (Title IV) and Section 1921 of the Social Security Act (Section 1921) govern the NPDB. Section 1128E of the Social Security Act (Section 1128E) governs the HIPDB. There was overlap between the two data banks following implementation of Section 1921 legislation in March 2010. Section 1921 expanded the scope of the NPDB, requiring each state to adopt a system of reporting to the Secretary certain adverse licensure actions taken against health care practitioners and health care entities by any authority of the state responsible for the licensing of such practitioners or entities. It also required each state to report any negative action or finding that a state licensing authority, a peer review organization, or a private accreditation entity has finalized against a health care practitioner or entity. Practically speaking, Section 1921 resulted in, among other consequences, including in the NPDB the vast majority of information contained in the HIPDB. On March 23, 2010, the Affordable Care Act was signed into law. Section 6403 of the law called for the elimination of duplication between the NPDB and the HIPDB. Section 1921 and Section 1128E statutory authorities were altered to eliminate duplicative reporting requirements.

The NPDB and HIPDB will merge to form one data bank. The HIPDB will cease operations following the merge, but the underlying statutory authority will remain intact and actions reported under that authority will now be moved to the NPDB. HRSA published a Final Rule merging the two databank systems on April 5, 2013 (78 FR 20473) that went into effect on May 6, 2013.

#### II. Proposed Alterations to NPDB

The revised NPDB SORN that follows includes these system alterations:

- revises the Purpose section to reflect the addition of information previously collected under the HIPDB related to fraud and abuse, specifically the inclusion of health care providers and suppliers and collection of health care related criminal convictions, civil judgments, and other adjudicated actions
- expands the Categories of Individuals section to include health care providers and health care suppliers
- expands the Categories of Records section to include records of federal licensure or certification actions, health care related criminal convictions, health care related civil judgments, and other adjudicated actions or decisions. These additional records resulted in one revised and eleven new personally identifiable information data elements numbered 4 and 21–31, respectively.
- expands the ''Records Sources Categories'' section to include federal licensing and certification agencies, federal and state prosecutors and attorneys, health plans, federal government agencies, and state law and fraud enforcement agencies
- revises two routine uses (numbered 8 and 15) to reflect inclusion of health care providers and suppliers and to remove outdated references to only Section 1921 information;
- adds one new routine use (numbered 14) to allow disclosure of certain information to health plans
- deletes three unnecessary routine uses, pertaining to the Comptroller General, the U.S. Attorney General, and statistical information (numbered 7, 8 and 12 in the current version of the SORN, published March 30, 2012)
- updates the Authority section to cite Section 1128E of the Social Security Act as amended by the Patient Protection and Affordable Care Act of 2010
- updates the Policies and Procedures section related to Safeguards, specifically removing reference to only Title IV reporting

#### III. Background on the Privacy Act

The Privacy Act (5 U.S.C. 552a) governs the means by which the U.S. Government collects, maintains, and uses information about individuals in a system of records. A ''system of records'' is a group of any records under the control of a federal agency from

which information about an individual is retrieved by the individual's name or other personal identifier. The Privacy Act requires each agency to publish in the **Federal Register** a system of records notice (SORN) identifying and describing each system of records the agency maintains, including the purpose for which the agency uses information about individuals in the system, the routine uses for which the agency discloses such information outside the agency, and how individual record subjects can exercise their rights under the Privacy Act (e.g., to determine if the system contains information about them).

Dated: July 5, 2013.

**Mary K. Wakefield,**

*Administrator.*

**SYSTEM NUMBER:**

09–15–0054

**SYSTEM NAME:**

National Practitioner Data Bank

**SECURITY CLASSIFICATION:**

Unclassified.

**SYSTEM LOCATION:**

A contractor operates and maintains the system through a technical service contract for the Division of Practitioner Data Banks, Bureau of Health Professions, Health Resources and Services Administration. This system is located at a contractor run data center, a secure facility; the street address will not be disclosed for security reasons. The address of the Division of Practitioner Data Banks, Bureau of Health Professions, Health Resources and Services Administration, is Room 8–103, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

The system collects and maintains records pertaining to the professional competence and conduct of health care practitioners as defined by 45 CFR 60.3 (e.g., physicians, dentists, nurses, allied health care professionals, social workers), health care suppliers as defined by 45 CFR 60.3 (e.g., durable medical equipment suppliers, manufactures of health care items, pharmaceutical suppliers and manufacturers), health care providers as defined by 45 CFR 60.3 (e.g., hospitals and health plans) and health care entities as defined by 45 CFR 60.3 (e.g., hospitals and health maintenance organizations which are licensed by a state). The first three categories (health care practitioners, providers and suppliers) include only individuals, or a mixture of individuals and entities.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

The system collects and maintains reports and query history records.

Reports include: (1) Medical malpractice payment reports for all health care practitioners (e.g., physicians, dentists, nurses, optometrists, pharmacists, podiatrists, etc.); (2) adverse licensure and certification action reports taken by states against health care practitioners, health care entities, providers or suppliers; (3) adverse licensure and certification action reports taken by federal agencies against health care practitioners, providers, or suppliers; (4) adverse clinical privileging actions reports for physicians, dentists, or other health care practitioners who may have medical staff privileges; (5) adverse professional society membership action reports for physicians, dentists or other health care practitioners; (6) negative actions or findings taken against health care practitioners, health care entities, providers, or suppliers by peer review organizations and private accreditation entities; (7) federal or state criminal convictions related to the delivery of a health care item or service reports for health care practitioners, providers, or suppliers; (8) civil judgments related to the delivery of a health care item or service for health care practitioners, providers, or suppliers; (9) reports of exclusions of health care practitioners, providers, or suppliers from participation in state or federal health care programs; and (10) other adjudicated actions taken against health care practitioners, providers, or suppliers by federal agencies, state agencies, or health plans. Reports may contain the following personally-identifiable data elements and records:

1. Name
2. Work address
3. Home address
4. Social Security number or individual tax identification number (ITIN)
5. Date of birth
6. Name of each professional school attended and year of graduation
7. Professional license(s) number
8. Field of licensure
9. Name of the state or territory in which the license is held
10. Drug Enforcement Administration (DEA) registration numbers
11. Centers for Medicare & Medicaid Services (CMS) unique practitioner identification number (for exclusions only)
12. Names of each hospital with which the practitioner is affiliated
13. Name and address of the entity making the payment
14. Name, title, and telephone number of the official responsible for submitting the report on behalf of the entity
15. Payment information including the date and amount of payment and whether it is for a judgment or settlement
16. Date action occurred
17. Acts or omissions upon which the action or claim was based
18. Description of the action/omissions and injuries or illnesses upon which the action or claim was based
19. Description of the Board action, the date of action and its effective date
20. Classification of the action/omission per reporting code
21. Court or judicial venue in which action was taken
22. Docket or court file number
23. Name of prosecuting agency or Civil Plaintiff
24. Prosecuting agency's case number
25. Statutory offense and counts
26. Date of judgment/sentence
27. Length of sentence
28. Amount of judgment or monetary penalty
29. Restitution or other orders
30. Nature of offense on which the action was based
31. Investigative agencies involved and any case/file numbers, if known

Query histories indicate the dates that a health care practitioner's, provider's, supplier's, or entity's report(s) were accessed/queried in the system and by whom. An individual practitioner's, provider's or supplier's report(s) and query history are available to him or her, if he or she elects to submit a self-query. However, the query history will not include query activity by law enforcement agencies, if any, due to the system's exemption (described below, under ''System Exempted From Certain Provisions of the Act'').

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Title IV of the Health Care Quality Improvement Act of 1986 (Title IV), as amended, Section 1921 of the Social Security Act, as amended, and Section 1128E of the Social Security Act as amended.

**PURPOSE(S):**

The purpose of the system is to: (1) Receive information such as medical malpractice payment reports, negative peer review actions, adverse licensure or certification actions, health care related criminal convictions, health care related civil judgments, exclusions, adverse clinical privileging actions, and other adjudicated actions as enumerated in the Categories of Reports, above, on all health care practitioners, suppliers, providers and entities; (2) store such

reports so that future queriers may have access to pertinent information in the course of making important decisions related to the delivery of health care services; and (3) disseminate such data to individuals and entities that qualify to receive the reports under the governing statutes as authorized by the Health Care Quality Improvement Act of 1986, Section 1921 of the Social Security Act and Section 1128E of the Social Security Act to protect the public from unfit practitioners and to prevent fraud and abuse. The system also allows practitioners, providers, and suppliers to self-query.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Information from this system is disclosed outside the agency for the following routine uses:

1. To hospitals requesting information such as adverse licensure actions, medical malpractice payments or exclusions from Medicare and Medicaid programs taken against all licensed health care practitioners such as physicians, dentists, nurses, podiatrists, chiropractors, and psychologists. The information is accessible to both public and private sector hospitals that can request information concerning a physician, dentist or other health care practitioner who is on its medical staff (courtesy or otherwise) or who has clinical privileges at the hospital, for the purpose of: (a) Screening the professional qualifications of individuals who apply for staff positions or clinical privileges at the hospital; and (b) meeting the requirements of the Health Care Quality Improvement Act of 1986, which prescribes that a hospital must query the NPDB once every 2 years regarding all individuals on its medical staff or who hold clinical privileges.

2. To other health care entities, as defined in 45 CFR 60.3, to which a physician, dentist or other health care practitioner has applied for clinical privileges or appointment to the medical staff or who has entered or may be entering an employment or affiliation relationship. The purpose of these disclosures is to assess the individual practitioner's qualifications for staff appointment or clinical privileges.

3. To a health care entity with respect to professional review activity. The purpose of these disclosures is to aid health care entities in the conduct of professional review activities, such as those involving determinations of whether a physician, dentist, or other health care practitioner may be granted membership in a professional society, the conditions of such membership, or changes to such membership; and ongoing professional review activities of the professional performance or conduct of a physician, dentist, or other health care practitioner.

4. To a state health care practitioner and/or entity licensing or certification authority that requests information in the course of conducting a review of all health care practitioners or health care entities or when making licensure determinations about health care practitioners and entities. The purpose of these disclosures is to aid the board or certification authority in meeting its responsibility to protect the health of the population in its jurisdiction, and to assess the qualifications of individuals seeking licenses or certifications.

5. To federal and state health care programs (and their contractors) that request information to aid them in ensuring the integrity of their programs and the professional competence of affiliated health care practitioners and uncovering information needed to make appropriate decisions in the delivery of health care.

6. To state Medicaid Fraud Control Units that request information to assist with investigating fraud, waste and abuse and in the prosecution of health care practitioners and providers relating to the Medicaid programs.

7. To utilization and quality control Peer Review Organizations and those entities which are under contract with the CMS, when they request information to protect and improve the quality of care for Medicare beneficiaries in the course of performing quality of care reviews and other related activities.

8. To a health care provider, supplier, or practitioner who requests information concerning himself, herself, or itself.

9. To a health care entity that has been reported on, when the entity queries the system to receive information concerning itself.

10. To an attorney, or an individual representing himself or herself, who has filed a medical malpractice action or claim in a state or federal court or other adjudicative body against a hospital, and who requests information regarding a specific physician, dentist, or other health care practitioner who is also named in the action or claim, provided that: (a) This information will be disclosed only upon the submission of evidence that the hospital failed to request information from the NPDB as required by law; and (b) the information will be used solely with respect to litigation resulting from the action or claim against the hospital. The purpose of these disclosures is to permit an attorney (or a person representing himself or herself in a medical malpractice action) to have information from the NPDB on a health care practitioner, under the conditions set out in this routine use.

11. To any federal entity, employing or otherwise engaging under arrangement (e.g., such as a contract) the services of a physician, dentist, or other health care practitioner, or having the authority to sanction such individuals covered by a federal program, which: (a) Enters into a memorandum of understanding with HHS regarding its participation in the NPDB; (b) engages in a professional review activity in determining an adverse action against a practitioner; and (c) maintains a Privacy Act system of records regarding the health care practitioners it employs, or whose services it engages under arrangement. The purpose of such disclosures is to enable hospitals and other facilities and health care providers under the jurisdiction of federal agencies such as the Public Health Service, HHS; the Department of Defense; the Department of Veterans' Affairs; the U.S. Coast Guard; and the Bureau of Prisons, Department of Justice, to participate in the NPDB. The Health Care Quality Improvement Act of 1986 includes provisions regarding the participation of such agencies and of the DEA.

12. To the Department of Justice in the event of litigation, for the purpose of enabling HHS to present an effective defense, where the defendant is: (a) HHS, any component of HHS, or any HHS employee in his or her official capacity; (b) the United States where HHS determines that the claim, if successful, is likely to affect directly the operation of HHS or any of its components; or (c) any HHS employee in his or her individual capacity where the Department of Justice has agreed to represent such employee, for example in defending a claim against the Public Health Service based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual; provided that such disclosure is compatible with the purpose for which the records were collected.

13. To the contractor engaged by the agency to operate and maintain the system. Operation and maintenance functions include but are not limited to providing continuous user availability, developing system enhancements, upgrading hardware and software, providing information security assurance, and performing system backups.

14. To a health plan requesting data concerning a health care provider, supplier, or practitioner for the purposes of preventing fraud and abuse activities and/or improving the quality of patient care, and in the context of hiring or retaining providers, suppliers and practitioners that are the subjects of reports.

15. To federal agencies requesting data concerning a health care provider, supplier, or physician, dentist or other practitioner for the purposes of anti-fraud and abuse activities and investigations, audits, evaluations, inspections and prosecutions relating to the delivery of and payment for health care in the United States and/or improving the quality of patient care, and in the context of hiring or retaining the providers, suppliers and individuals that are the subject of reports to the system. This would include law enforcement investigations and other law enforcement activities.

16. To appropriate federal agencies and HHS contractors that have a need to know the information for the purpose of assisting HHS' efforts to respond to a suspected or confirmed breach of the security or confidentiality of information maintained in this system of records, and the information disclosed is relevant and necessary for that assistance.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

STORAGE: Records are maintained on database servers with disk storage, optical jukebox storage, backup tapes and printed reports.

RETRIEVABILITY: Records are retrieved by name, date of birth, Social Security Number, educational information, and license number. The matching algorithm uses these data elements to match reports to the subject.

SAFEGUARDS:

1. Authorized users include internal users such as government and contractor personnel who support the NPDB. Users are required to obtain favorable adjudication for a Level 5 Position of Public Trust. Government and contractor personnel who support the NPDB must attend security training, sign a Non-Disclosure Agreement, and sign the Rules of Behavior, which is renewed annually. Users are given role-based access to the system on a limited need-to-know basis. All physical and logical access to the system is removed upon termination of employment. External users, who are responsible for meeting NPDB reporting and/or querying requirements to the NPDB, are responsible for determining their eligibility to access the NPDB through a self-certification process which requires completing an Entity Registration form. All external users must acknowledge the Rules of Behavior. All external users must re-register every two years to access the NPDB. The registration process consists of an electronic authentication process where each user needs to prove his or her identity and organizational affiliation based on requirements in National Institute of Standards and Technology (NIST) SP 800–63–1. Both HRSA and the contractor maintain lists of authorized users.

2. Physical safeguards involve physical controls that are in place 24 hours a day/7 days a week such as identification badge access, cipher locks, locked hardware cages, man trap with biometric hand scanner, security guard monitoring, and closed circuit TV. All sites are protected with fire and environmental safety controls.

3. Technical safeguards include firewalls, network intrusion detection, host-based intrusion detection and file integrity monitoring, user identification, database activity monitoring, data loss prevention and passwords restrictions. All web-based traffic is encrypted using 128 bit SSL and all network traffic is encrypted internally.

4. Administrative safeguards involve certification and accreditation that is required every three years, which authorizes operation of the system based on acceptable risk. Security assessments are conducted continuously throughout the year to verify compliance with all required controls.

**RETENTION AND DISPOSAL OF RECORDS:**

HRSA is working with the National Archive and Records Administration (NARA) to determine the appropriate retention period for electronic records. The records require long-term retention. Pending finalization of an appropriate disposition schedule with the National Archives and Records Administration (NARA), the records are being retained indefinitely.

**SYSTEM MANAGER AND ADDRESS:**

Director, Division of Practitioner Data Banks, Bureau of Health Professions, Health Resources and Services Administration, Room 8–103, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

**NOTIFICATION PROCEDURE:**

Currently, an individual report subject is notified via U.S. mail when a report concerning him or her is submitted to the NPDB via Subject Notification Document (SND). This procedure is unchanged by the exemption published for the system.

**RECORD ACCESS PROCEDURES:**

Although this system is exempt from the Privacy Act access requirement, the exemption is limited and discretionary. An individual report subject may seek access to his or her records in the NPDB by submitting a self-query request form on-line at: *www.npdb.hrsa.gov.* The requests are submitted over the web using the Integrated Query and Reporting Service (IQRS), Query and Reporting Extensible Markup Language Service (QRXS), Interface Control Document (ICD) Transfer Program (ITP) or the Continuous Query. Self-query, as described previously, may be initiated via the electronic system and is completed using the conventional mail system. Requesters, including self-queriers, will receive an accounting of disclosures that have been made of their records, if any. The exemption will prevent law enforcement query activity from being disclosed to the health care practitioner in response to a self-query. Notwithstanding the access exemption, a practitioner may request access to his or her full query history (i.e., including law enforcement query activity, if any), by submitting a written request to the System Manager identified above and following the same procedures indicated under ''Notification Procedure.'' The request will be processed pursuant to the agency's discretionary access authority under 45 CFR 5b.11(d).

**REQUESTS BY MAIL:**

Practitioners may submit a ''Request for Information Disclosure'' to the address under system location for any report on themselves. The request must contain the following: Name, address, date of birth, gender, Social Security Number (optional), professional schools and years of graduation, and the professional license(s). For license, include: The license number, the field of licensure, the name of the state or territory in which the license is held, and DEA registration number(s). The practitioner must submit a signed and notarized self-query request.

**REQUESTS IN PERSON:**

Due to security considerations, the NPDB cannot accept requests in person.

**REQUESTS BY TELEPHONE:**

Practitioners may provide all of the identifying information stated above to the NPDB Customer Service Center operator. Before the data request is fulfilled, the operator will return a paper copy of this information for verification, signature and notarization.

**PENALTIES FOR VIOLATION:**

Submitting a request under false pretenses is a criminal offense and subject to a civil monetary penalty of up to $11,000 for each violation. 42 CFR 1003.103(c).

**CONTESTING RECORD PROCEDURES:**

Because of the system's exemption, the procedures for disputing an NPDB report will not apply to law enforcement query history information that is exempt from access, and all amendment requests will be governed by the procedures at 45 CFR 60.21. The NPDB routinely mails a copy of any report filed in it to the subject individual. A subject individual may contest the accuracy of information in the NPDB concerning himself or herself and file a dispute. To dispute the accuracy of the information, the individual must contact the NPDB and the reporting entity to: (1) Request that the reporting entity file a correction to the report; and (2) request the information be entered into a ''disputed'' status and submit a statement regarding the basis for the inaccuracy of the information in the report. If the reporting entity declines to change the disputed report or takes no actions, the subject may request that the Secretary of HHS review the disputed report. In order to seek a review, the subject must: (1) Provide written documentation containing clear and brief factual information regarding the information of the report; (2) submit supporting documentation or justification substantiating that the reporting entity's information is inaccurate; and (3) submit proof that the subject individual has attempted to resolve the disagreement with the reporting entity but was unsuccessful. The Department can only determine whether the report was legally required to be filed and whether the report accurately depicts the action taken and the reporter's basis for action. Additional detail on the process of dispute resolution can be found at 45 CFR 60.21 of the NPDB regulations.

**RECORD SOURCE CATEGORIES:**

The records contained in the system are submitted by the following entities: (1) Insurance companies and others who have made payment as a result of a malpractice action or claim; (2) state health care licensing and certification authorities; (3) federal licensing and certification agencies (e.g., DEA); (4) peer review organizations and private accreditation entities; (5) hospitals and other health care entities (includes professional societies); (6) federal and state prosecutors and attorneys; (7) health plans; (8) federal government agencies; and (9) state law and fraud enforcement agencies.

**SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

The Secretary has exempted law enforcement query records in this system from certain provisions of the Privacy Act. In accordance with 5 USC 552a(k)(2) and 45 CFR 5b.11(b)(2)(ii)(L), with respect to law enforcement query records, this system is exempt from subsections (c)(3), (d)(1)–(4), (e)(4)(G) and (H), and (f) of 5 USC 552a. See 76 FR 72325, published November 23, 2011, adding NPDB as an exempt system.

[FR Doc. 2013–18599 Filed 8–2–13; 8:45 am]

**BILLING CODE 4160–15–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Proposed Collection; 60-Day Comment Request: Community Evaluation of the National Diabetes Education Program's Diabetes HealthSense Web site

*Summary:* In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collections projects, the National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Written comments and/or suggestions from the public and affected agencies are invited to address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) 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, electronic, mechanical, or other technological collection techniques or other forms of information technology.

*To Submit Comments and For Further Information:* To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact Joanne M. Gallivan, MS, RD, Director, National Diabetes Education Program, OCPL, NIDDK, 31 Center Drive, Room 9A06, Bethesda, MD, 20892 or call non toll-free number 301–496–6110 or Email your request including your address to *joanne_gallivan@nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

*Comment Due Date:* Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

*Proposed Collection:* Community Evaluation of the National Diabetes Education Program's Diabetes HealthSense Web site. 0925–NEW, National Institute of Diabetes and Digestive and Kidney Disease (NIDDK), National Institutes of Health (NIH).

*Need and Use of Information Collection:* The National Diabetes Education Program (NDEP) is a partnership of the National Institutes of Health (NIH) and the Centers for Disease Control and Prevention (CDC) and more than 200 public and private organizations. The long-term goal of the NDEP is to reduce the burden of diabetes and pre-diabetes in the United States, and its territories, by facilitating the adoption of proven strategies to prevent or delay the onset of diabetes and its complications. The NDEP objectives are to: (1) Increase awareness and knowledge of the seriousness of diabetes, its risk factors, and effective strategies for preventing type 2 diabetes and complications associated with diabetes; (2) Increase the number of people who live well with diabetes and effectively manage their disease to prevent or delay complications and improve quality of life; (3) Decrease the number of Americans with undiagnosed diabetes; (4) Among people at risk for type 2 diabetes, increase the number who make and sustain effective lifestyle changes to prevent diabetes; (5) Facilitate efforts to improve diabetes-related health care and education, as well as systems for delivering care; (6) Reduce health disparities in populations disproportionately burdened by diabetes; and (7) Facilitate the incorporation of evidence-based research findings into health care practices.

One product that NDEP has developed to address many of these objectives is Diabetes HealthSense, an online compendium of psychosocial and behavioral resources to support lifestyle changes. This study will be a multi-component 3-year evaluation of

Diabetes HealthSense. The required forms will support the following evaluation tasks: (1) Assessing community educators' experience and satisfaction with NDEP resources such as the Diabetes HealthSense Web site; (2) Assess the extent to which, through participation in Diabetes HealthSense educational sessions, community educators can increase their knowledge and ability to promote and use NDEP resources; and (3) Assess the extent to which the Web site, with guided exploration, can facilitate changes in lifestyle to help prevent or manage diabetes. The data collected from this evaluation will provide NDEP with information about how community educators use NDEP-created resources in their communities and whether the Diabetes HealthSense resource has its intended effect on participants. Such data will help inform NDEP's future decisions about the Diabetes HealthSense Web site, including whether to make changes to Diabetes HealthSense, and whether to invest additional resources to support, promote or expand this resource.

OMB approval is requested for three years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 328.

ESTIMATED ANNUALIZED BURDEN HOURS

| Form name | Type of respondent | Estimated number of respondents | Estimated number of responses per respondent | Average time per response (in hours) | Estimated total annual burden hours |
|---|---|---|---|---|---|
| Participant Pretest | Adult intervention participants | 225 | 1 | 20/60 | 75 |
| Participant Posttest | Adult intervention participants | 150 | 1 | 20/60 | 50 |
| Participant Exit Satisfaction Survey | Adult intervention participants | 225 | 1 | 10/60 | 38 |
| Participant Follow-up Interview | Adult intervention participants | 15 | 1 | 1 | 15 |
| Participant Pretest | Adult comparison group participants | 250 | 1 | 20/60 | 83 |
| Participant Posttest | Adult comparison group participants | 150 | 1 | 20/60 | 50 |
| Community Educator Pre Interview | Community educators | 5 | 1 | 1 | 5 |
| Community Educator Post Interview | Community educators | 5 | 1 | 1 | 5 |
| Intervention Participant Recruitment Guide. | Community educators | 5 | 3 | 15/60 | 4 |
| Comparison Participant Recruitment Guide. | Community educators | 10 | 1 | 15/60 | 3 |

Dated: July 18, 2013.

**Ruby N. Akomeah,**

*Project Clearance Liaison, NIDDK, NIH.*

[FR Doc. 2013–18820 Filed 8–2–13; 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; Urology Small Business Applications.

*Date:* August 14–15, 2013.

*Time:* 8:00 a.m. to 2:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Ryan G Morris, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4205, MSC 7814, Bethesda, MD 20892, 301–435–1501, *morrisr@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Skeletal Biology.

*Date:* August 28, 2013.

*Time:* 12:00 p.m. to 2:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Aruna K Behera, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4211, MSC 7814, Bethesda, MD 20892, 301–435–6809, *beheraak@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 30, 2013.

**Michelle Trout,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–18722 Filed 8–2–13; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and

the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

*Date:* September 10, 2013.

*Open:* 8:30 a.m. to 12:00 p.m.

*Agenda:* Discussion of Program Policies.

*Place:* National Institutes of Health, Building 31, Conference Room 6, 31 Center Drive, Bethesda, MD 20892.

*Closed:* 1:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Building 31, Conference Room 6, 31 Center Drive, Bethesda, MD 20892.

*Contact Person:* Laura K. Moen, Ph.D., Director, Division of Extramural Research Activities, NIAMS/NIH, 6700 Democracy Boulevard, Suite 800, Bethesda, MD 20892, 301–451–6515, *moenl@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: July 30, 2013.

**Carolyn Baum,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–18724 Filed 8–2–13; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Eunice Kennedy Shriver National Institute of Child Health & Human Development; 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 Child Health and Human Development Special Emphasis Panel.

*Date:* August 14, 2013.

*Time:* 2:00 p.m. to 3:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference).

*Contact Person:* Marita R. Hopmann, Ph.D., Scientific Review Officer, Division Of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health And Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301–435–6911, *hopmannm@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: July 30, 2013.

**Michelle Trout,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–18726 Filed 8–2–13; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Eunice Kennedy Shriver National Institute of Child Health & Human Development; 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Child Health and Human Development Special Emphasis Panel; Asthma Cohort Support Contract.

*Date:* August 12, 2013.

*Time:* 1:00 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* Sathasiva B. Kandasamy, Ph.D., Scientific Review Officer, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Executive Boulevard, Rockville, MD 20892–9304, (301) 435–6680, *skandasa@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: July 30, 2013.

**Michelle Trout,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–18725 Filed 8–2–13; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Center for Complementary & Alternative Medicine; 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 Center for Complementary and Alternative Medicine Special Emphasis Panel; ZAT1 HS 14 Training, Education and AREA grants.

*Date:* October 25, 2013.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Hungyi Shau, Ph.D., Scientific Review Officer, National Center For Complementary and Alternative Medicine, National Institutes of Health, 6707 Democracy Boulevard, Suite 401, Bethesda, MD 20892, 301–402–1030, *Hungyi.Shau@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: July 30, 2013.

**Michelle Trout,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–18723 Filed 8–2–13; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID: FEMA–2013–0033; OMB No. 1660–0123]**

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** The Federal Emergency Management Agency, 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 an extension, without change, of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the Regional Catastrophic Preparedness Grant Program (RCPGP).

**DATES:** Comments must be submitted on or before October 4, 2013.

**ADDRESSES:** To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *www.regulations.gov* under Docket ID FEMA–2013–0033. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Docket Manager, Office of Chief Counsel, DHS/FEMA, 500 C Street SW., Room 840, Washington, DC 20472–3100.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of *www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Contact Nicholas Sleptzoff, Program Specialist, FEMA, National Preparedness Directorate, 202–212–3794 for additional information. You may contact the Records Management Division for copies of the proposed collection of information at facsimile number (202) 646–3347 or email address: *FEMA-Information-Collections-Management@dhs.gov.*

**SUPPLEMENTARY INFORMATION:** The purpose of the Regional Catastrophic Preparedness Grant Program (RCPGP) is to enhance catastrophic incident preparedness in Tier 1 and selected Tier 2 Urban Areas. RCPGP is intended to support coordination of regional all-hazard planning for catastrophic events, including the development of integrated planning communities, plans, protocols, and procedures to manage a catastrophic event. The RCPGP is authorized by Title III of the Department of Homeland Security Appropriations Act, 2013 (Pub. L. 113–6).

The RCPGP information is to be used to produce improved catastrophic plans and planning processes by the states and local jurisdictions involved. Specifically, the plans and planning must address shortcomings in existing plans to address regional catastrophic planning issues, including the establishment of a regional network of plans to address catastrophic events. Plans will include a process for establishing an incident command structure and will also identify roles and responsibilities for each organization. Additionally, plans will identify detailed resource, personnel, and asset allocations in order to execute strategic objectives and translate strategic priorities into operational execution. These plans should apply existing capabilities and assist in assessing gaps in needed capabilities.

### Collection of Information

*Title:* FEMA Preparedness Grants: Regional Catastrophic Preparedness Grant Program (RCPGP).

*OMB Number:* 1660–0123.

*Type of Information Collection:* Extension, without change, of a currently approved information collection.

*FEMA Forms:* FEMA Form 089–19, RCPGP Investment Justification Template; FEMA Form 089–26, RCGCP (Sample) Detailed Project Plan Template; FEMA Form 089–17, RCPT Membership List.

*Abstract:* The RCPGP is an important tool among a comprehensive set of measures to help strengthen the Nation against risks associated with potential terrorist attacks. DHS/FEMA uses the information to evaluate applicants' familiarity with the national preparedness architecture and identify how elements of this architecture have been incorporated into regional/state/local planning, operations, and investments.

*Affected Public:* State, local or Tribal Government.

*Number of Respondents:* 10.

*Number of Responses:* 40.

*Estimated Total Annual Burden Hours:* 1,762 hours.

ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS

| Type of respondent | Form name/form number | Number of respondents | Number of responses per respondent | Total number of responses | Average burden per response (in hours) | Total annual burden (in hours) | Average hourly wage rate ($) | Total annual respondent cost ($) |
|---|---|---|---|---|---|---|---|---|
| State, Local or Tribal Government. | RCPGP Investment Justification Template/FEMA Form 089–19. | 10 | 1 | 10 | 120 | 1,200 | $50.08 | $60,096.00 |
| State, Local or Tribal Government. | RCPGP (Sample) Detailed Project Plan Template/FEMA Form 089–26. | 10 | 1 | 10 | 40 | 400 | 50.08 | 20,032.00 |
| State, Local or Tribal Government. | Regional Catastrophic Planning Team (RCPT) Charter Guidelines. | 10 | 1 | 10 | 16 | 160 | 50.08 | 8,012.80 |

ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS—Continued

| Type of respondent | Form name/form number | Number of respondents | Number of responses per respondent | Total number of responses | Average burden per response (in hours) | Total annual burden (in hours) | Average hourly wage rate ($) | Total annual respondent cost ($) |
|---|---|---|---|---|---|---|---|---|
| State, Local or Tribal Government. | RCPT Membership List/FEMA Form 089–17. | 10 | 1 | 10 | 0.2 | 2 | 50.08 | 100.16 |
| Total ..... | ..... | 10 | ..... | 40 | ..... | 1,762 | ..... | 88,240.96 |

*Estimated Cost:* The estimated annual cost to respondents for the hour burden is $88,240.96. There are no annual costs to respondents operations and maintenance costs for technical services. There is no annual start-up or capital costs. The cost to the Federal Government is $33,963.52.

**Comments**

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Dated: July 29, 2013.

**Loretta Cassatt,**

*Chief, Records Branch, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.*

[FR Doc. 2013–18791 Filed 8–2–13; 8:45 am]

**BILLING CODE 9111–46–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID FEMA–2013–0002; Internal Agency Docket No. FEMA–B–1337]**

### Changes in Flood Hazard Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Title 44, Part 65 of the Code of Federal Regulations (44 CFR Part 65). The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

**DATES:** These flood hazard determinations will become effective on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Deputy Associate Administrator for Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

**ADDRESSES:** The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

**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 specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR Part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the 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 National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or

pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

| State and county | Location and case No. | Chief executive officer of community | Community map repository | Online location of Letter of Map Revision | Effective date of modification | Community No. |
|---|---|---|---|---|---|---|
| Arizona: | | | | | | |
| Cochise .. | Unincorporated areas of Cochise County (13–09–0282P). | The Honorable Ann English Chair, Cochise County Board of Supervisors, 1415 Melody Lane, Building G, Bisbee, AZ 85603. | Cochise County Flood Control District, 1415 Melody Lane, Building F, Bisbee, AZ 85603. | *http://www.r9map.org/Docs/13-09-0282P-040012-102D.pdf.* | September 9, 2013 .... | 040012 |
| Maricopa | City of Chandler (13–09–0386P). | The Honorable Jay Tibshraeny, Mayor, City of Chandler, P.O. Box 4008, Chandler, AZ 85224. | Public Works Department, 215 East Buffalo Street, Chandler, AZ 85224. | *http://www.r9map.org/Docs/13-09-0386P-040040-102IAC.pdf.* | September 20, 2013 .. | 040040 |
| Maricopa | City of Peoria (13–09–0048P). | The Honorable Bob Barrett, Mayor, City of Peoria, 8401 West Monroe Street, Peoria, AZ 85345. | City Hall, 8401 West Monroe Street, Peoria, AZ 85345. | *http://www.r9map.org/Docs/13-09-0048P-040050-102IAC.pdf.* | August 30, 2013 ..... | 040050 |
| California: | | | | | | |
| Contra Costa. | City of Pleasant Hill (13–09–0336P). | The Honorable Michael G. Harris, Mayor, City of Pleasant Hill, 100 Gregory Lane, Pleasant Hill, CA 94523. | Public Works Department, 100 Gregory Lane, Pleasant Hill, CA 94523. | *http://www.r9map.org/Docs/13-09-0336P-060034-102DA.pdf.* | August 5, 2013 ..... | 060034 |
| Merced ... | City of Merced (13–09–1225P). | The Honorable Stanley P. Thurston, Mayor, City of Merced, 678 West 18th Street, Merced, CA 95340. | City Hall, 678 West 18th Street, Merced, CA 95340. | *http://www.r9map.org/Docs/13-09-1225P-060191-102DA.pdf.* | September 6, 2013 .... | 060191 |
| Riverside | City of Canyon Lake (13–09–0376P). | The Honorable Mary Craton, Mayor, City of Canyon Lake, 31516 Railroad Canyon Road, Canyon Lake, CA 92587. | City Hall, 31516 Railroad Canyon Road, Canyon Lake, CA 92587. | *http://www.r9map.org/Docs/13-09-0376P-060753-102IAC.pdf.* | August 30, 2013 ..... | 060753 |
| Riverside | City of Menifee (13–09–0376P). | The Honorable Scott Mann, Mayor, City of Menifee, 29714 Haun Road, Menifee, CA 92586. | Planning Department, 29714 Haun Road, Menifee, CA 92586. | *http://www.r9map.org/Docs/13-09-0376P-060176-102IAC.pdf.* | August 30, 2013 ..... | 060176 |
| Riverside | City of Riverside (12–09–2546P). | The Honorable Rusty Bailey, Mayor, City of Riverside, 3900 Main Street, Riverside, CA 92501. | Planning and Building Department 3900 Main Street Riverside, CA 92501. | *http://www.r9map.org/Docs/12-09-2546P-060260-102IAC.pdf.* | September 3, 2013 .... | 060260 |
| San Diego. | City of San Marcos (13–09–1397P). | The Honorable Jim Desmond, Mayor, City of San Marcos, 1 Civic Center Drive, San Marcos, CA 92069. | City Hall, 1 Civic Center Drive, San Marcos, CA 92069. | *http://www.r9map.org/Docs/13-09-1397P-060296-102DA.pdf.* | September 6, 2013 .... | 060296 |

| State and county | Location and case No. | Chief executive officer of community | Community map repository | Online location of Letter of Map Revision | Effective date of modification | Community No. |
|---|---|---|---|---|---|---|
| San Mateo. | City of South San Francisco (13–09–1038P). | The Honorable Pedro Gonzalez, Mayor, City of South San Francisco, P.O. Box 711, South San Francisco, CA 94083. | City Hall, 400 Grand Avenue, South San Francisco, CA 94080. | *http://www.r9map.org/Docs/13-09-1038P-065062-102IAC.pdf.* | September 9, 2013 .... | 065062 |
| California: | | | | | | |
| Santa Barbara. | Unincorporated areas of Santa Barbara County (13–09–1226P). | The Honorable Salud Carbajal, Chairman, Santa Barbara County Board of Supervisors, 105 East Anapamu Street, Santa Barbara, CA 93101. | Santa Barbara County Public Works Public Department, Water Resources Division, 123 East Anapamu Street, Santa Barbara, CA 93101. | *http://www.r9map.org/Docs/13-09-1226P-060331-102IAC.pdf.* | September 20, 2013 .. | 060331 |
| Ventura .. | City of Simi Valley (13–09–1766P). | The Honorable Bob Huber, Mayor, City of Simi Valley, 2929 Tapo Canyon Road, Simi Valley, CA 93063. | City Hall, 2929 Tapo Canyon Road, Simi Valley, CA 93063. | *http://www.r9map.org/Docs/13-09-1766P-060421-102IAC.pdf.* | September 19, 2013 .. | 060421 |
| Colorado: | | | | | | |
| Arapahoe | City of Centennial (13–08–0083P). | The Honorable Cathy Noon, Mayor, City of Centennial, 13133 East Arapahoe Road, Centennial, CO 80112. | Southeast Metro Stormwater Authority, 76 Inverness Drive East, Suite A, Centennial, CO 80112. | *http://www.bakeraecom.com/index.php/colorado/arapahoe/.* | August 30, 2013 ..... | 080315 |
| Jefferson | Unincorporated areas of Jefferson County (13–08–0231P). | The Honorable Donald Rosier, Chairman, Jefferson County Board of Commissioners, 100 Jefferson County Parkway, Golden, CO 80419. | Jefferson County Department of Planning and Zoning, 100 Jefferson County Parkway, Golden, CO 80419. | *http://www.bakeraecom.com/index.php/colorado/jefferson-5/.* | September 6, 2013 .... | 080087 |
| Routt ..... | City of Steamboat Springs (13–08–0177P). | Ms. Deb Hinsvark, Manager, City of Steamboat Springs, P.O. Box 775088, Steamboat Springs, CO 80477. | City Hall, 124 10th Street, Steamboat Springs, CO 80477. | *http://www.bakeraecom.com/index.php/colorado/routt/.* | August 26, 2013 ..... | 080159 |
| Florida: | | | | | | |
| Collier .... | City of Naples (13–04–2098P). | The Honorable John F. Sorey, III, Mayor, City of Naples, 735 8th Street, South Naples, FL 34102. | Building Department, 295 Riverside Circle, Naples, FL 34102. | *http://www.bakeraecom.com/index.php/florida/collier/.* | August 30, 2013 ..... | 125130 |
| Sumter ... | Unincorporated areas of Sumter County (13–04–1285P). | The Honorable Doug Gilpin, Chairman, Sumter County Board of Commissioners, 7375 Powell Road, Wildwood, FL 34785. | Sumter County Planning Department, 7375 Powell Road, Wildwood, FL 34785. | *http://www.baker aecom.com/index.php/florida/sumter-2/.* | September 20, 2013 .. | 120296 |
| Duval ..... | City of Jacksonville (13–04–0158P). | The Honorable Alvin Brown, Mayor, City of Jacksonville, 117 West Duval Street, Jacksonville, FL 32202. | Development Services Division, 117 West Duval Street, Jacksonville, FL 32202. | *http://www.bakeraecom.com/index.php/florida/duval/.* | September 6, 2013 .... | 120077 |

| State and county | Location and case No. | Chief executive officer of community | Community map repository | Online location of Letter of Map Revision | Effective date of modification | Community No. |
|---|---|---|---|---|---|---|
| Duval | City of Jacksonville (13–04–3128P). | The Honorable Alvin Brown, Mayor, City of Jacksonville, 117 West Duval Street, Jacksonville, FL 32202. | Development Services Division, 117 West Duval Street, Jacksonville, FL 32202. | *http://www.bakeraecom.com/index.php/florida/duval/.* | August 30, 2013 | 120077 |
| Georgia: | | | | | | |
| Dougherty. | City of Albany (13–04–1420P). | The Honorable Dorothy Hubbard, Mayor, City of Albany, 222 Pine Avenue, Albany, GA 31701. | City Hall, 222 Pine Avenue, Albany, GA 31701. | *http://www.bakeraecom.com/index.php/georgia/dougherty/.* | September 6, 2013 | 130075 |
| Glynn | Unincorporated areas of Glynn County (13–04–2726P). | The Honorable Mary Hunt, Chair, Glynn County Board of Commissioners, 172 Palmera Lane, Brunswick, GA 31525. | Glynn County Building Department, 1725 Reynolds Street, Brunswick, GA 31525. | *http://www.bakeraecom.com/index.php/georgia/glynn/.* | August 30, 2013 | 130092 |
| Mississippi: | | | | | | |
| Union | Town of New Albany (13–04–2091P). | The Honorable Tim Kent, Mayor, Town of New Albany, P.O. Box 56, New Albany, MS 38652. | Town Hall, 101 West Bankhead Street, New Albany, MS 38652. | *http://www.bakeraecom.com/index.php/mississippi/union-3/.* | July 22, 2013 | 280174 |
| North Dakota: | | | | | | |
| Stark | Unincorporated areas of Stark County (13–08–0275P). | The Honorable Ken Zander, Chairman, Stark County Board of Commissioners, P.O. Box 130, Dickinson, ND 58602. | Stark County Recorder's Office, 51 3rd Street East, Dickinson, ND 58602. | *http://www.bakeraecom.com/index.php/northdakota/stark/.* | August 19, 2013 | 385369 |
| South Carolina: | | | | | | |
| Greenville | City of Greenville (13–04–1043P). | The Honorable Knox White, Mayor, City of Greenville, P.O. Box 2207, Greenville, SC 29602. | City Council Office, 206 South Main Street, Greenville, SC 29601. | *http://www.bakeraecom.com/index.php/southcarolina/greenville/.* | July 26, 2013 | 450091 |
| Berkeley | Town of Moncks Corner (13–04–1115P). | The Honorable William W. Peagler, III, Mayor, Town of Moncks Corner, P.O. Box 700, Moncks Corner, SC 29461. | Town Hall, 118 Carolina Avenue, Moncks Corner, SC 29461. | *http://www.bakeraecom.com/index.php/southcarolina/berkeley/.* | September 19, 2013 | 450031 |
| Tennessee: | | | | | | |
| Knox | City of Knoxville (13–04–1221P). | The Honorable Madeline Rogero, Mayor, City of Knoxville, P.O. Box 1631, Knoxville, TN 37902. | Engineering Division, City County Building, 400 Main Street, Room 480, Knoxville, TN 37902. | *http://www.bakeraecom.com/index.php/tennessee/knox-2/.* | September 20, 2013 | 475434 |
| Wyoming: | | | | | | |
| Natrona | City of Casper (13–08–0084P). | The Honorable Kenyne Schlager, Mayor, City of Casper, 200 North David Street, Casper, WY 82601. | Community Development Department, 200 North David Street, Casper, WY 82601. | *http://www.bakeraecom.com/index.php/wyoming/natrona/.* | August 30, 2013 | 560037 |

| State and county | Location and case No. | Chief executive officer of community | Community map repository | Online location of Letter of Map Revision | Effective date of modification | Community No. |
|---|---|---|---|---|---|---|
| Natrona .. | Unincorporated areas of Natrona County (13–08–0084P). | The Honorable Bill McDowell, Chairman, Natrona County Board of Commissioners, 200 North Center, Casper, WY 82601. | Natrona County Planning and Zoning Department, 120 West 1st Street, Suite 200, Casper, WY 82601. | *http://www.bakeraecom.com/index.php/wyoming/natrona/.* | August 30, 2013 ..... | 560036 |

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: July 12, 2013.

**Roy Wright,**

*Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.*

[FR Doc. 2013–18789 Filed 8–2–13; 8:45 am]

**BILLING CODE 9110–12–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4129–DR; Docket ID FEMA–2013–0001]**

### New York; 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 for the State of New York (FEMA–4129–DR), dated July 12, 2013, and related determinations.

**DATES:** *Effective Date:* July 26, 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 declared disaster is now June 26, 2013, through and including July 4, 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. 2013–18808 Filed 8–2–13; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4129–DR; Docket ID FEMA–2013–0001]**

### New York; 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 New York (FEMA–4129–DR), dated July 12, 2013, and related determinations.

**DATES:** *Effective Date:* July 26, 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 York 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 July 12, 2013.

Broome, Chautauqua, Clinton, and Essex Counties 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. 2013–18790 Filed 8–2–13; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4020–DR; Docket ID FEMA–2013–0001]**

### New York; Amendment No. 10 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 York (FEMA–4020–DR), dated August 31, 2011, and related determinations.

**DATES:** *Effective Date:* July 25, 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 York 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 August 31, 2011.

Fulton 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. 2013–18793 Filed 8–2–13; 8:45 am]

BILLING CODE 9111–23–P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5683–N–66]**

## 30-Day Notice of Proposed Information Collection: Section 811 Project Rental Assistance for Persons with Disabilities

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

**DATES:** *Comments Due Date:* September 4, 2013.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

**FOR FURTHER INFORMATION CONTACT:** Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on February 27, 2013.

### A. Overview of Information Collection

*Title of Information Collection:* Section 811 Project Rental Assistance for Persons with Disabilities.

*OMB Approval Number:* 2502-New.

*Type of Request:* New collection.

*Form Number:* SF–424, SF–424 Supplement, SF–LLL, HUD–2880, HUD–424CB, HUD–2993, HUD–2990, HUD–96011, HUD–2994–A, HUD–96010.

*Description of the need for the information and proposed use:* The collection of this information is necessary to the Department to assist HUD in determining applicant eligibility and capacity to award and administer the HUD PRAD funds within statutory and program criteria. A thorough evaluation of an applicant's submission is necessary to protect the Government's financial interest.

*Respondents* (describe): State, Local and Tribal Government.

*Estimated Number of Respondents:* 5,020.

*Estimated Number of Responses:* 5,065.

*Frequency of Response:* Occasion.

*Average Hours per Response:* 127.86.

*Total Estimated Burdens:* 24,833.05.

### B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

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

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

### C. Authority

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: July 29, 2013.

**Colette Pollard,**

*Department Reports Management Officer, Office of the Chief Information Officer.*

[FR Doc. 2013–18801 Filed 8–2–13; 8:45 am]

BILLING CODE 4210–67–P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5690–N–09]**

## 60-Day Notice of Proposed Information Collection: Public Housing Contracting With Resident-Owned Business—Application Requirements

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice.

**SUMMARY:** HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

**DATES:** *Comments Due Date: October 4, 2013.*

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–5564 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

**FOR FURTHER INFORMATION CONTACT:** Arlette Mussington, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street SW., (L'Enfant Plaza, Room 2206), Washington, DC 20410; telephone 202–402–4109. This is not a toll-free number.

Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Mussington.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. *Title of Proposal:* Public Housing Contracting with Resident-Owned Businesses/Application Requirements.

*OMB Approval Number:* 2577–0161.

*Description of the Need for the Information and Its Proposed Use:*

PHAs that enter into contracts with resident-owned businesses must comply with the requirements/procedures set forth in 24 CFR 963.10, 24 CFR 963.12, 24 CFR 85.36(h), 24 CFR 85.36(i) and other such contract terms that may be applicable to the procurement under the Department's regulations. These requirements include:

- Certified copies of any State, county, or municipal licenses that may be required of the business to engage in the type of business activity for which it was formed. Where applicable, the PHA must obtain a certified copy of its corporate charter or other organizational document that verifies that the business was properly formed in accordance with State law;
- Certification that shows the business is owned by residents, disclosure documents that indicate all owners of the business and each owner's percentage of the business along with sufficient evidence sufficient that demonstrates to the satisfaction of the PHA that the business has the ability to perform successfully under the terms and conditions of the proposed contract;
- Certification as to the number of contracts awarded, and the dollar amount of each contract award received, under the alternative procurement process; and
- Contract award documents, proof of bonding documents, independent cost estimates and comparable price analyses.

*Agency form number, if applicable:* None.

*Members of Affected Public:* Public Housing Agencies and Applicable Resident Entrepreneurs

*Estimation of the Total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* Estimated number of respondents: 81. The calculation for burden hours is as follows: Calculation for number of respondents: 81 (estimated number of PHAs contracting with resident owned businesses) × 24 (number of hours for procurement process) = 1,944 total hours.

| Number of PHAs | Number of responses annually* | Hours per response | Total annual burden hours |
|---|---|---|---|
| 81 ..... | 81 | *24 | 1,944 |

Status of the Proposed Information Collection: Meeting HUD Regulation requirements

B. *Solicitation of Public Comment:* This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

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

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: July 26, 2013.

**Merrie Nichols-Dixon,**

*Deputy Director, Office of Policy, Programs and Legislative Initiatives.*

[FR Doc. 2013–18804 Filed 8–2–13; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5693–N–05]**

## Privacy Act of 1974; Computer Matching Program Between the Department of Housing and Urban Development (HUD) and the Department of Health and Human Services (HHS): Matching Tenant Data in Assisted Housing Programs

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice of a new computer matching agreement between HUD and HHS.

**SUMMARY:** Pursuant to the Computer Matching and Privacy Protection Act of 1988, as amended, HUD is providing notice of its intent to execute a new computer matching agreement with HHS for a recurring matching program with HUD's Office of Public and Indian Housing (PIH) and Office of Housing, involving comparisons of information provided by participants in any authorized HUD rental housing assistance program with the independent sources of income information available through the National Directory of New Hires (NDNH) maintained by HHS. Specifically, the HUD–HHS computer matching program now provides an updated cost/benefit analysis providing an assessment of the benefits attained by HUD through the matching program. The most recent renewal of the current matching agreement expires on August 3, 2013.

**DATES:** HUD will file a report of the subject matching program with the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and Office of Management and Budget's (OMB), Office of Information and Regulatory Affairs. The matching program will become effective as cited in Section V of this notice.

**ADDRESSES:** Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address.

**FOR FURTHER INFORMATION CONTACT:** For Privacy Act Inquires: Office of the Chief Information Officer, contact the Chief Privacy Officer, Department of Housing and Urban Development, 451 Seventh Street SW., Room 2256, Washington, DC 20410, telephone number (202) 402–8073. For program information: Office of Public and Indian Housing, contact Nelson Stephens, Program Manager for the Real Estate Assessment Center, Department of Housing and Urban Development, 451 Seventh Street, SW.,

Room PCFL1, Washington, DC 20410, telephone number (202) 475–7963; and for the Office of Housing, contact Yvette Viviani, Director of the Housing Assistance Policy Division, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6160, Washington, DC 20410, telephone number (202) 402–2366. (These are not toll-free numbers.) A telecommunications device for hearing- and speech-impaired individuals (TTY) is available at (800) 877–8339 (Federal Information Relay Service).

**SUPPLEMENTARY INFORMATION:** Pursuant to the Computer Matching and Privacy Protection Act (CMPPA) of 1988, as amended, OMB's guidance on this statute entitled ''Final Guidance Interpreting the Provisions of Public Law 100–503'', and OMB Circular No. A–130, Appendix 1 to OMB's Revisions of Circular No. A–130, ''Transmittal Memorandum No. 4, Management of Federal Information Resources,'' which prescribes responsibilities for agencies maintaining records about individuals, HUD is providing the public with notice of a new computer matching agreement with HHS (notice of a computer matching program between HUD and HHS was previously published at 73 FR 10046 on February 25, 2008 and 76 FR 579 on January 5, 2011). The first HUD–HHS computer matching program was conducted in September 2005, with HUD's Office of Public and Indian Housing. The scope of the HUD–HHS computer matching program was extended to include HUD's Office of Housing in December 2007. This notice supersedes the previous notice and changes the scope of the existing computer matching program to now include the updated cost/benefit analysis.

The matching program will be carried out only to the extent necessary to: (1) Verify the employment and income of individuals participating in programs identified in Section I below, to correctly determine the amount of their rent and assistance, (2) identify, prevent, and recover improper payments made on behalf of tenants, and (3) after removal of personal identifiers, to conduct analyses of the employment and income reporting of individuals participating in any HUD authorized rental housing assistance program.

HUD will make the results of the computer matching program available to public housing agencies (PHAs), private housing owners and management agents (O/As) administering HUD rental assistance programs to enable them to verify employment and income and correctly determine the rent and assistance levels for individuals participating in those programs, and contract administrators (CAs) overseeing and monitoring O/A operations. This information also may be disclosed to the HUD Inspector General (HUD/IG) and the Attorney General in detecting and investigating potential cases of fraud, waste, and abuse of the above named programs.

In addition to the above noted information disclosures, limited redisclosure of reports containing NDNH information may be redisclosed to the following persons and/or entities: (1) Independent auditors for the sole purpose of performing an audit of whether these HUD authorized entities verified tenants' employment and/or income and calculated the subsidy and rent correctly; and (2) entities and/or individuals associated with grievance procedures and judicial proceedings (i.e. lawyers, court personnel, agency personnel, grievance hearing officers, etc.) relating to independently verified unreported income identified through this matching program.

HUD and its third party administrators (PHAs, O/As, and CAs) will use this matching authority to identify, reduce or eliminate improper payments in HUD's rental housing assistance programs, while continuing to ensure that HUD rental housing assistance programs serve and are accessible by its intended program beneficiaries.

## I. Authority

This matching program is being conducted pursuant to Section 217 of the Consolidated Appropriation Act of 2004 (Pub. L. 108–199, Approved January 23, 2004), which amended Section 453(j) of the Social Security Act (42 U.S.C. 653(j)), Sections 3003 and 13403 of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66, approved August 10, 1993); Section 542(b) of the 1998 Appropriations Act (Pub. L. 105–65); Section 904 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, as amended by Section 239 of HUD's 2009 Appropriations, effective March 11, 2009 (42 U.S.C. 3544); Section 165 of the Housing and Community Development Act of 1987 (42 U.S.C. 3543); the National Housing Act (12 U.S.C. 1701–1750g); the United States Housing Act of 1937 (42 U.S.C. 1437–1437z); Section 101 of the Housing and Community Development Act of 1965 (12 U.S.C. 1701s); the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.); and the Quality Housing and Work Responsibility Act of 1998 (42 U.S.C. 1437a(f)).

The Housing and Community Development Act of 1987 authorizes HUD to require applicants and participants (as well as members of their household six years of age and older) in HUD-administered programs involving rental housing assistance to disclose to HUD their social security numbers (SSNs) as a condition of initial or continuing eligibility for participation in the programs. Effective January 31, 2010, all applicants and participants under the age of six, are required to disclose their SSN to HUD, in accordance with regulatory revisions made to 24 CFR 5.216, as published at 74 FR 68924, on December 29, 2009.

Section 217 of the Consolidated Appropriations Act of 2004 (Pub. L. 108–199, approved January 23, 2004) authorizes HUD to provide to HHS information on persons participating in any programs authorized by:

(i) The United States Housing Act of 1937 (42 U.S.C. 1437 et seq.);

(ii) Section 202 of the Housing Act of 1959 (12 U.S.C. 1701q);

(iii) Section 221(d)(3), 221(d)(5) or 236 of the National Housing Act (12 U.S.C. 17151(d) and 1715z–1);

(iv) Section 811 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8013); or

(v) Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s);

The Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs: Implementation of the Enterprise Income Verification (EIV) System—Amendments; Final rule published at 74 FR 68924 on December 29, 2009, requires program administrators to use HUD's EIV system to verify tenant employment and income information during mandatory reexaminations or recertifications of family composition and income and reduce administrative and subsidy payment errors in accordance with HUD administrative guidance (new HUD regulation at 24 CFR 5.233).

This matching program also assists HUD in complying with the following federal laws, requirements, and guidance related to identifying and reducing improper payments:

1. Improper Payments Elimination and Recovery Act of 2010 (IPERA) (Pub. L. 111–204);

2. Presidential Memorandum on Enhancing Payment Accuracy Through a ''Do Not Pay List'' (June 18, 2010);

3. Office of Management and Budget M–10–13, Issuance of Part III to OMB Circular A–123, appendix C;

4. Presidential Memorandum on Finding and Recapturing Improper Payments (March 10, 2010);

5. Reducing Improper Payments and Eliminating Waste in Federal Programs (Executive Order 13520, November 2009);

6. Improper Payments Information Act of 2002 (Pub. L. 107–300); and

7. Office of Management and Budget M–03–13, Improper Payments Information Act of 2002 Implementation Guide.

HHS shall then compare this information provided by HUD with data contained in the National Directory of New Hires and report the results of the data match to HUD. The Act gives HUD the authority to disclose this information to CAs, O/As, and PHAs for the purpose of verifying the employment and income of individuals receiving benefits in the above programs. HUD shall not seek, use or disclose information relating to an individual without the prior written consent of that individual, and HUD has the authority to require consent as a condition of participating in HUD rental housing assistance programs.

HHS' disclosure of data from the National Directory of New Hires is authorized by Section 217 of the Consolidated Appropriations Act of 2004 (Pub. L. 108–199). The disclosures from the HHS system of records, ''Location and Collection System of Records,'' No. 09–90–0074, will be made pursuant to ''Routine Use'' (17), identified in the **Federal Register** last published at 72 FR 51446 on September 7, 2007. This routine use authorizes HHS to ''disclose to the Department of Housing and Urban Development information in the NDNH portion of this system for purposes of verifying employment and income of individuals participating in specified programs and, after removal of personal identifiers, to conduct analyses of the employment and income reporting of these individuals.''

## II. Objectives To Be Met by the Matching Program

HUD's primary objective of the computer matching program is to verify the employment and income of individuals participating in the housing programs identified in Section I above, to determine the appropriate level of rental assistance, and to detect, deter and correct fraud, waste, and abuse in rental housing assistance programs. In meeting these objectives HUD also is carrying out a responsibility under 42 U.S.C. 1437f(K) to ensure that income data provided to PHAs, and O/As, by household members is complete and accurate. HUD's various rental housing assistance programs require that participants meet certain income and other criteria to be eligible for rental assistance. In addition, tenants generally are required to report and recertify the amounts and sources of their income at least annually. However, under the QHWRA of 1998, PHAs operating Public Housing programs may now offer tenants the option to pay a flat rent, or an income-based rent. Those tenants who select a flat rent will be required to recertify income at least every three years. In addition, the changes to the Admissions and Occupancy final rule (March 29, 2000 (65 FR 16692)) specified that household composition must be recertified annually for tenants who select a flat rent or income-based rent.

An additional objective of this computer matching program is to facilitate the statistical measurement of subsidy error by completing an annual QC study. The QC study provides national estimates of the extent, severity, costs, and sources of rent errors for rental assistance programs, administered by the Offices of Housing and Pubic and Indian Housing. This study is designed to measure the extent of administrative error by housing providers and tenant income reporting errors. The errors evaluated in this study affect the rent contributions tenants should have been charged. HUD will use NDNH information resulting from this data comparison and disclosure solely for the purpose of conducting aggregate analyses of employment and income reporting of individuals participating in the rental housing assistance programs. The study will not contain personally identifiable information of individuals.

## III. Program Description

In this computer matching program, tenant-provided information included in HUD's automated systems of records known as Tenant Rental Assistance Certification System (TRACS) (HUD/H–11), Inventory Management System (HUD/PIH–4, formerly the Public and Indian Housing Information Center (PIC) (HUD/PIH–4), and Enterprise Income Verification (EIV) System (HUD/PIH–5) will be compared to data from the NDNH database. The notices for these systems were published at 65 FR 52777, 67 FR 20986, and 70 FR 41780, which was subsequently amended and published at 72 FR 17589, respectively. The notice for the EIV system was subsequently updated and published in the **Federal Register** on September 1, 2009, at 74 FR 45235. HUD will disclose to HHS only tenant personal identifiers, i.e., full name, Social Security Number, and date of birth. HHS will match the HUD-provided personal identifiers to personal identifiers included in the National Directory of New Hires (NDNH) contained within their systems of records known as ''Location and Collection System of Records,'' No. 09–90–0074. HHS will provide income data to HUD only for individuals with matching personal identifiers.

### *A. Income Verification*

Any disparity between tenant-reported income and/or sources and the income and sources derived from the match (i.e., a ''hit'') will be further reviewed by HUD, the program administrator, or the HUD Office of Inspector General (OIG) to determine whether the income reported by tenants to the program administrator is correct and complies with HUD and program administrator requirements. Specifically, current or prior wage information and other data will be sought directly from employers and/or tenants.

### *B. Administrative or Legal Actions*

With respect to the ''hits'' that will occur as a result of this matching program, HUD requires program administrators to take appropriate action in consultation with tenants to: (1) resolve income disparities between tenant-reported and independent income source data, and (2) use correct income amounts in determining housing rental assistance.

Program administrators must compute the rent in full compliance with all applicable occupancy regulations. Program administrator must ensure that they use the correct income and correctly compute the rent. The program administrator may not suspend, terminate, reduce, or make a final denial of any housing assistance to any tenant as the result of information produced by this matching program until: (a) The tenant has received notice from the program administrator of its findings, and tenants are informed of the opportunity to contest such findings and (b) either the expiration of any notice period provided in applicable HUD requirements of the program or the 30-day period beginning on the date on which notice of adverse findings was mailed or otherwise provided to the tenant. In all cases, program administrators will resolve income discrepancies in consultation with tenants. Additionally, serious violations, which program administrators, HUD program staff, or HUD OIG verify, should be referred for

full investigation and appropriate civil and/or criminal proceedings.

**IV. Records To Be Matched**

HHS will conduct the matching of tenant SSNs, full names, and dates of births (DOBs) to tenant data HUD supplies from its Tenant Rental Assistance Certification System (TRACS) (HUD/H–11) and Public and Indian Housing Information Center (PIC) system (HUD/PIH–4). Program administrators utilize the form HUD–50058 module within the PIC system and the form HUD–50059 module within the TRACS to provide HUD with the tenant data.

HHS will match the tenant records included in HUD/H–11 and HUD/PIH–4 to NDNH records contained in HHS' ''Location and Collection System of Records,'' No. 09–90–0074. HUD will place the resulting matched data into its Enterprise Income Verification (EIV) system (HUD/PIH–5). The notice for this system was published at 72 FR 17589, and subsequently updated and published in the **Federal Register** on September 1, 2009, at 74 FR 45235. Routine uses of records maintained in the system, including categories of users and purposes of such uses was published in that Notice.

**V. Period of the Match**

The matching program will become effective and the matching may commence after the respective Data Integrity Boards (DIBs) of both agencies approve and sign the computer matching agreement, and after, the later of the following: (1) 40 days after report of the matching program is sent to Congress and OMB; (2) at least 30 days after publication of this notice in the **Federal Register**, unless comments are received, which would result in a contrary determination. The computer matching program will be conducted according to agreement between HUD and HHS. The computer matching agreement for the planned match will terminate either when the purpose of the computer matching program is accomplished, or 18 months from the effective date. The agreement may be renewed for one 12-month period, with the mutual agreement of all involved parties, if the following conditions are met:

(1) Within three months of the expiration date, all Data Integrity Boards (DIBs) review the agreement, find that the program will be conducted without change, and find a continued favorable examination of benefit/cost results; and (2) All parties certify that the program has been conducted in compliance with the agreement.

The agreement may be terminated, prior to accomplishment of the computer matching purpose or 18 months from the date the agreement is signed (whichever comes first), by the mutual agreement of all involved parties within 30 days of written notice.

**Authority:** 5 U.S.C. 552a; 88 Stat. 1896; 42 U.S.C. 3535(d).

Dated: July 17, 2013.

**Harold E. Williams,**

*Acting Chief Information Officer.*

[FR Doc. 2013–18795 Filed 8–2–13; 8:45 am]

BILLING CODE 4210–67–P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5725–N–01]**

## Proposed Fair Market Rents for the Housing Choice Voucher Program, Moderate Rehabilitation Single Room Occupancy Program and Other Programs Fiscal Year 2014

**AGENCY:** Office of the Assistant Secretary for Policy Development and Research, HUD.

**ACTION:** Notice of Proposed Fiscal Year (FY) 2014 Fair Market Rents (FMRs).

**SUMMARY:** Section 8(c)(1) of the United States Housing Act of 1937 (USHA) requires the Secretary to publish FMRs periodically, but not less than annually, adjusted to be effective on October 1 of each year. The primary uses of FMRs are to determine payment standards for the Housing Choice Voucher (HCV) program, to determine initial renewal rents for some expiring project-based Section 8 contracts, to determine initial rents for housing assistance payment contracts in the Moderate Rehabilitation Single Room Occupancy program, and to serve as rent ceilings in the HOME program. FMRs are also used in the calculation of maximum award amounts for Continuum of Care grantees. Today's notice provides proposed FY 2014 FMRs for all areas that reflect the estimated 40th and 50th percentile rent levels trended to April 1, 2014. The FY 2014 FMRs are based on 5-year, 2007–2011 data collected by the American Community Survey (ACS). These data are updated by one-year ACS data for areas where statistically valid one-year ACS data is available. The Consumer Price Index (CPI) rent and utility indexes are used to further update the data from 2011 to the end of 2012. HUD continues to use ACS data in different ways according to the statistical reliability of rent estimates for areas of different population sizes and counts of rental units.

The proposed FY 2014 FMR areas are based on Office of Management and Budget (OMB) metropolitan area definitions as updated through December 1, 2009 and include HUD modifications that were first used in the determination of FY 2006 FMR areas. The February 28, 2013 OMB Area definition update has not been incorporated in the FMR process due to the timing of the release and the availability of ACS data. HUD will work toward incorporating these new area definitions into the Proposed FY 2015 FMR calculations; however, this is dependent on the availability of ACS data conforming to the new area definitions.

The proposed FY 2014 FMRs in this notice reflect several updates to the methodology used to calculate FMRs. HUD has updated the information used to calculate FMRs in Puerto Rico. Puerto Rico FMRs are now based on 2007–2011 Puerto Rico Community Survey (PRCS) data (the PRCS is a part of the ACS program). Moreover, HUD is using Consumer Price Index data calculated specifically for Puerto Rico rather than using South Census Region CPI data. Additionally, these FMRs continue to use the annually updated trend factor calculation methodology. This trend factor for the FY2014 FMRs is based on the change in national gross rents from 2006 to 2011.

**DATES:** *Comment Due Date:* September 4, 2013.

**ADDRESSES:** Interested persons are invited to submit comments regarding the proposed FMRs to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW., Room 10276, Washington, DC 20410–0001. Communications must refer to the above docket number and title and should contain the information specified in the ''Request for Comments'' section. There are two methods for submitting public comments.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to 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 all federal agencies, however, submission of comments by mail often results in delayed delivery. To ensure timely receipt of comments, HUD recommends that comments submitted by mail be submitted at least two weeks in advance of the public comment deadline.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow instructions provided on that site to submit comments electronically.

**Note:** To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

*No Facsimile Comments.* Facsimile (FAX) comments are not acceptable.

*Public Inspection of Public Comments.* All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the Federal Relay Service at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** For technical information on the methodology used to develop FMRs or a listing of all FMRs, please call the HUD USER information line at 800–245–2691 or access the information on the HUD USER Web site *http://www.huduser.org/portal/datasets/fmr.html.* FMRs are listed at the 40th or 50th percentile in Schedule B. For informational purposes, 40th percentile recent-mover rents for the areas with 50th percentile FMRs will be provided in the HUD FY 2014 FMR documentation system at *http://www.huduser.org/portal/datasets/fmr/fmrs/docsys.html&data=fmr14* and 50th percentile rents for all FMR areas will be published at *http://www.huduser.org/portal/datasets/50per.html* after publication of final FY 2014 FMRs.

Questions related to use of FMRs or voucher payment standards should be directed to the respective local HUD program staff. Questions on how to conduct FMR surveys or concerning further methodological explanations may be addressed to Marie L. Lihn or Peter B. Kahn, Economic and Market Analysis Division, Office of Economic Affairs, Office of Policy Development and Research, telephone 202–708–0590. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339. (Other than the HUD USER information line and TDD numbers, telephone numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:**

## I. Background

Section 8 of the USHA (42 U.S.C. 1437f) authorizes housing assistance to aid lower-income families in renting safe and decent housing. Housing assistance payments are limited by FMRs established by HUD for different geographic areas. In the HCV program, the FMR is the basis for determining the ''payment standard amount'' used to calculate the maximum monthly subsidy for an assisted family (see 24 CFR 982.503). In general, the FMR for an area is the amount that would be needed to pay the gross rent (shelter rent plus utilities) of privately owned, decent, and safe rental housing of a modest (non-luxury) nature with suitable amenities. In addition, all rents subsidized under the HCV program must meet reasonable rent standards. HUD's regulations at 24 CFR 888.113 permit it to establish 50th percentile FMRs for certain areas.

*Electronic Data Availability:* This **Federal Register** notice will be available electronically from the HUD User page at *http://www.huduser.org/datasets/fmr.html.* **Federal Register** notices also are available electronically from http://www.gpoaccess.gov/fr/index.html, the U.S. Government Printing Office Web site. Complete documentation of the methodology and data used to compute each area's proposed FY 2014 FMRs is available at *http://www.huduser.org/portal/datasets/fmr/fmrs/docsys.html&data=fmr14.* Proposed FY 2014 FMRs are available in a variety of electronic formats at *http://www.huduser.org/portal/datasets/fmr.html.* FMRs may be accessed in PDF format as well as in Microsoft Excel. Small Area FMRs based on proposed FY 2014 Metropolitan Area Rents are available in Microsoft Excel format at the same web address. Please note that these Small Area FMRs are for reference only, except where they are used by public housing agencies (PHAs) participating in the Small Area FMR demonstration.

## II. Procedures for the Development of FMRs

Section 8(c) of the USHA requires the Secretary of HUD to publish FMRs periodically, but not less frequently than annually. Section 8(c) states, in part, as follows:

> Proposed fair market rentals for an area shall be published in the **Federal Register** with reasonable time for public comment and shall become effective upon the date of publication in final form in the **Federal Register**. Each fair market rental in effect under this subsection shall be adjusted to be effective on October 1 of each year to reflect changes, based on the most recent available data trended so the rentals will be current for the year to which they apply, of rents for existing or newly constructed rental dwelling units, as the case may be, of various sizes and types in this section.

HUD's regulations at 24 CFR part 888 provide that HUD will develop proposed FMRs, publish them for public comment, provide a public comment period of at least 30 days, analyze the comments, and publish final FMRs. (See 24 CFR 888.115.)

In addition, HUD's regulations at 24 CFR 888.113 set out procedures for HUD to assess whether areas are eligible for FMRs at the 50th percentile. Minimally qualified areas [1] are reviewed each year unless not qualified to be reviewed. Areas are not qualified to be reviewed if they have been made a 50th-percentile area within the last three years or have lost 50th-percentile status for failure to de-concentrate within the last three years.

In FY 2013 there were 20 areas using 50th-percentile FMRs. Of these 20 areas, only one area, the Bergen-Passaic, NJ HMFA, has completed three years of program participation and is due for re-evaluation. Voucher tenant concentration in the Bergen-Passaic, NJ HMFA has decreased below what is required to be eligible for a 50th percentile FMR and the area has ''graduated'' from the 50th percentile program. Under current 50th percentile regulations, the Bergen-Passaic, NJ

[1] As defined in 24 CFR 888.113(c), a minimally qualified area is an area with at least 100 census tracts where 70 percent or fewer of the census tracts with at least 10 two bedroom rental units are census tracts in which at least 30 percent of the two bedroom rental units have gross rents at or below the two bedroom FMR set at the 40th percentile rent. This continues to be evaluated with 2000 Decennial Census information. Although the 5-year ACS tract level data is available, HUD plans to implement new 50th percentile areas in conjunction with the implementation of new OMB area definitions.

HMFA will be evaluated annually and may return to the program in the future.

In summary, there will be 19 50th-percentile FMR areas in FY 2014. These areas are indicated by an asterisk in Schedule B, where all FMRs are listed by state. The following table lists the FMR areas along with the year of their next evaluation.

FY 2014 50TH-PERCENTILE FMR AREAS AND YEAR OF NEXT REEVALUATION

| | |
|---|---|
| Austin-Round Rock-San Marcos, TX MSA | 2015 |
| Fort Worth-Arlington, TX HUD Metro FMR Area | 2015 |
| Hartford-West Hartford-East Hartford, CT HUD Metro FMR Area | 2015 |
| Honolulu, HI MSA | 2015 |
| Houston-Baytown-Sugar Land, TX HUD Metro FMR Area | 2015 |
| Las Vegas-Paradise, NV MSA | 2015 |
| North Port-Bradenton-Sarasota, FL MSA | 2015 |
| Orange County, CA HUD Metro FMR Area | 2015 |
| Phoenix-Mesa-Glendale, AZ MSA | 2015 |
| Riverside-San Bernardino-Ontario, CA MSA | 2015 |
| Sacramento—Arden-Arcade—Roseville, CA HUD Metro FMR Area | 2015 |
| Tucson, AZ MSA | 2015 |
| Virginia Beach-Norfolk-Newport News, VA–NC MSA | 2015 |
| Baltimore-Towson, MD HUD Metro FMR Area | 2016 |
| Fort Lauderdale, FL HUD Metro FMR Area | 2016 |
| New Haven-Meriden, CT HUD Metro FMR Area | 2016 |
| Philadelphia-Camden-Wilmington, PA–NJ–DE–MD MSA | 2016 |
| Richmond, VA HUD Metro FMR Area | 2016 |
| West Palm Beach-Boca Raton, FL HUD Metro FMR Area | 2016 |

## III. FMR Methodology

This section provides a brief overview of how the FY 2014 FMRs are computed. For complete information on how FMR areas are determined, and on how each area's FMRs are derived, see the online documentation at *http://www.huduser.org/portal/datasets/fmr/fmrs/docsys.html&data=fmr14*.

The proposed FY 2014 FMRs are based on OMB metropolitan area definitions and standards that were first used in the FY 2006 FMRs. OMB's changes to the area definitions through December 2009 are incorporated as are non-metropolitan county changes published by the Census Bureau through December 2011. The updated metropolitan area definitions published by OMB on February 28, 2013 were published after HUD contracted with the Census Bureau for the special tabulations of ACS data necessary to calculate FMRs; therefore, the FY 2014 area definitions are the same as those used in FY 2013. HUD anticipates that the new OMB area definitions will be incorporated into the FY 2015 or FY 2016 proposed FMRs, depending on the year that the Census Bureau incorporates these area definitions in its ACS data tabulations.

### *A. Base Year Rents*

The U.S. Census Bureau released standard tabulations of 5-year ACS data collected between 2007 through 2011 in December of 2012. For FY 2014 FMRs, HUD used the 2007–2011 5-year ACS data to update the base rents as was done in FY 2012 using 2005–2009 ACS data and again in FY 2013, using 2006–2010 data. HUD is also implementing new base rents for Puerto Rico FMRs based on 2007–2011 Puerto Rico Community Survey data collected through the American Community Survey program. HUD has not implemented the Puerto Rico Community Survey data as base rents in prior years due to concerns expressed about the adequacy of the survey results; however, when HUD implements the new OMB metropolitan area definitions, the Department will have no choice but to use the ACS data for determining FMRs in Puerto Rico. Consequently, the Department is implementing the new base rent data in FY 2014 rather than try to implement both base rent data and new area definitions at the same time.

FMRs are historically based on gross rents for recent movers (those who have moved into their current residence in the last 24 months). However, due to the way the 5-year ACS data are constructed, HUD developed a new methodology for calculating recent-mover FMRs in FY 2012. As in FY 2012, all areas are assigned as a base rent the estimated two-bedroom standard quality 5-year gross rent from the ACS.[2] Because HUD's regulations mandate that FMRs must be published as recent mover gross rents, HUD continues to apply a recent mover factor to the standard quality base rents assigned from the 5-year ACS data. Calculation of the recent mover factor is described below.

The ACS is not used as the base rent for seven areas where the FY 2013 FMR was adjusted based on survey data conducted by the PHA (for Hood River, OR) and by HUD (for Cheyenne, WY, Odessa, TX, Burlington, VT, Mountrail County, ND, Ward County, ND, and Williams County, ND). In addition, the ACS will not be the base rent for two additional areas surveyed by HUD where the FY 2013 FMR was not adjusted (Flagstaff, AZ and Rochester, MN) and for an additional PHA-surveyed area (Oakland, CA). HUD has commissioned local area surveys in Danbury, CT, Barnes County, ND, Lamoure County, ND, Ransom County, ND and Stutsman County, ND and will replace ACS base rents with survey generated base rents if the survey results provide evidence that the base rents require adjustments.

### *B. Recent Mover Factor*

Following the assignment of the standard quality two-bedroom rent described above, HUD applies a recent mover factor to these rents. The calculation of the recent mover factor for FY 2014 is similar to the methodology used in FY 2013, with the only difference being the use of updated ACS data. As described below, HUD calculates a similar percentage increase as the FY 2013 factor using data from the smallest geographic area containing the FMR area where the recent mover

[2] For areas with a two-bedroom standard quality gross rent from the ACS that have a margin of error greater than the estimate or no estimate due to inadequate sample in the 2007–2011 5-year ACS, HUD uses the two-bedroom state non-metro rent for non-metro areas.

gross rent is statistically reliable.[3] The following describes the process for determining the appropriate recent mover factor.

In general, HUD uses the 1 year ACS-based two-bedroom recent mover gross rent estimate from the smallest geographic area encompassing the FMR area for which the estimate is statistically reliable to calculate the recent mover factor. HUD calculates some areas' recent mover factors using data collected just for the FMR area. Other areas' recent mover factors are based on larger geographic areas. For metropolitan areas that are sub-areas of larger metropolitan areas, the order is subarea, metropolitan area, state metropolitan area, and state. Metropolitan areas that are not divided follow a similar path from FMR area, to state metropolitan areas, to state. In nonmetropolitan areas the recent mover factor is based on the FMR area, the state nonmetropolitan area, or if that is not available, on the basis of the whole state. The recent mover factor is calculated as the percentage change between the 5-year 2007–2011 standard quality two-bedroom gross rent and the 1 year 2011 recent mover two-bedroom gross rent for the recent mover factor area. Recent mover factors are not allowed to lower the standard quality base rent; therefore, if the 5-year standard quality rent is larger than the comparable 1 year recent mover rent, the recent mover factor is set to 1. The process for calculating each area's recent mover factor is detailed in the FY 2014 Proposed FMR documentation system available at: *http://www.huduser.org/portal/datasets/fmr/fmrs/docsys.html&data=fmr14*.

This process produces an ''as of'' 2011 recent mover two-bedroom base gross rent for the FMR area.[4]

*C. Updates From 2011 to 2012*

The ACS-based ''as of'' 2011 rent is updated through the end of 2012 using the annual change in CPI from 2011 to 2012. As in previous years, HUD uses Local CPI data coupled with Consumer Expenditure Survey (CEX) data for FMR areas with at least 75 percent of their population within Class A metropolitan areas covered by local CPI data. HUD uses Census region CPI data for FMR areas in Class B and C size metropolitan areas and nonmetropolitan areas without local CPI update factors. Additionally, HUD is using CPI data collected locally in Puerto Rico as the basis for CPI adjustments from 2011 to 2012 for all Puerto Rico FMR areas. Following the application of the appropriate CPI update factor, HUD converts the ''as of'' 2012 CPI adjusted rents to ''as of'' December 2012 rents by multiplying each rent by the national December 2012 CPI divided by the national annual 2012 CPI value. HUD does this in order to apply an exact amount of the annual trend factor to place the FY 2014 FMRs as of the mid-point of the 2014 fiscal year.

*D. Trend From 2012 to 2014*

As in FY 2013, HUD continues to calculate the trend factor as the annualized change in median gross rents as measured across the most recent 5 years of available 1 year ACS data. The national median gross rent in 2006 was $763 and $871 in 2011. The overall change between 2006 and 2011 is 14.15 percent and the annualized change is 2.68 percent. Over a 15-month time period, the effective trend factor is 3.365 percent.

*E. Bedroom Rent Adjustments*

HUD calculates the primary FMR estimates for two-bedroom units. This is generally the most common sized rental unit and, therefore, the most reliable to survey and analyze. Formerly, after each Decennial Census, HUD calculated rent relationships between two-bedroom units and other unit sizes and used them to set FMRs for other units. HUD did this because it is much easier to update two-bedroom estimates and to use pre-established cost relationships with other bedroom sizes than it is to develop independent FMR estimates for each bedroom size. When calculating FY 2013 FMRs, HUD updated the bedroom ratio adjustment factors using 2006–2010 5-year ACS data using similar methodology to what was implemented when calculating bedroom ratios using 2000 Census data to establish rent ratios. The bedroom ratios used in the calculation of FY 2014 FMRs were updated this year using the 2006–2010 ACS data in conjunction with the update of base rents to ACS based data. HUD will continue to use the same bedroom ratios until the 5-year ACS from 2011–2015 is released, probably in time for the FY 2018 FMRs.

HUD established bedroom interval ranges based on an analysis of the range of such intervals for all areas with large enough samples to permit accurate bedroom ratio determinations. These ranges are: Efficiency FMRs are constrained to fall between 0.59 and 0.81 of the two-bedroom FMR; one-bedroom FMRs must be between 0.74 and 0.84 of the two-bedroom FMR; three-bedroom FMRs must be between 1.15 and 1.36 of the two-bedroom FMR; and four-bedroom FMRs must be between 1.24 and 1.64 of the two-bedroom FMR. (The maximums for the three-bedroom and four-bedroom FMRs are irrespective of the adjustments discussed in the next paragraph.) HUD adjusts bedroom rents for a given FMR area if the differentials between bedroom-size FMRs were inconsistent with normally observed patterns (i.e., efficiency rents are not allowed to be higher than one-bedroom rents and four-bedroom rents are not allowed to be lower than three-bedroom rents). The bedroom ratios for Puerto Rico follow these constraints.

HUD further adjusts the rents for three-bedroom and larger units to reflect HUD's policy to set higher rents for these units than would result from using unadjusted market rents. This adjustment is intended to increase the likelihood that the largest families, who have the most difficulty in leasing units, will be successful in finding eligible program units. The adjustment adds 8.7 percent to the unadjusted three-bedroom FMR estimates and adds 7.7 percent to the unadjusted four-bedroom FMR estimates. The FMRs for unit sizes larger than four bedrooms are calculated by adding 15 percent to the four-bedroom FMR for each extra bedroom. For example, the FMR for a five-bedroom unit is 1.15 times the four-bedroom FMR, and the FMR for a six-bedroom unit is 1.30 times the four-bedroom FMR. FMRs for single-room occupancy units are 0.75 times the zero-bedroom (efficiency) FMR.

For low-population, nonmetropolitan counties with small or statistically insignificant 2006–2010 5-year ACS recent-mover rents, HUD uses state non-metropolitan data to determine bedroom ratios for each bedroom size. HUD made this adjustment to protect against unrealistically high or low FMRs due to insufficient sample sizes.

## IV. Manufactured Home Space Surveys

The FMR used to establish payment standard amounts for the rental of manufactured home spaces in the HCV program is 40 percent of the FMR for a two-bedroom unit. HUD will consider modification of the manufactured home space FMRs where public comments present statistically valid survey data

[3] For the purpose of the recent mover factor calculation, statistically reliable is where the recent mover gross rent has a margin of error that is less than the estimate itself.

[4] The ACS is not conducted in the Pacific Islands (Guam, Northern Marianas and American Samoa) or the U.S. Virgin Islands. As part of the 2010 Decennial Census, the Census Bureau conducted a ''long-form'' sample surveys for these areas. The results gathered by this long form survey were expected to be available late in 2012; however, these data have not yet become available. Therefore, HUD uses the national change in gross rents, measured between 2010 and 2011 to update last year's FMRs for these areas.

showing the 40th-percentile manufactured home space rent (including the cost of utilities) for the entire FMR area.

All approved exceptions to these rents that were in effect in FY 2013 were updated to FY 2014 using the same data used to estimate the HCV program FMRs. If the result of this computation was higher than 40 percent of the new two-bedroom rent, the exception remains and is listed in Schedule D. The FMR area definitions used for the rental of manufactured home spaces are the same as the area definitions used for the other FMRs.

## V. Small Area Fair Market Rents

Public housing authorities in the Dallas, TX HMFA, along with the Housing Authority of the County of Cook (IL), the City of Long Beach (CA) Housing Authority, the Chattanooga, TN Housing Authority, the Town of Mamaroneck (NY) Housing Authority, and the Laredo, TX Housing Authority continue to be the only PHAs managing their voucher programs using Small Area Fair Market Rents (SAFMRs). These FMRs are listed in the Schedule B addendum. The department is working to secure more housing authority participants in its Small Area FMR Demonstration program.

SAFMRs are calculated using a rent ratio determined by dividing the median gross rent across all bedrooms for the small area (a ZIP code) by the similar median gross rent for the metropolitan area of the ZIP code. This rent ratio is multiplied by the current two- bedroom rent for the entire metropolitan area containing the small area to generate the current year two-bedroom rent for the small area. In small areas where the median gross rent is not statistically reliable, HUD substitutes the median gross rent for the county containing the ZIP code in the numerator of the rent ratio calculation. For proposed FY 2014 SAFMRs, HUD continues to use the rent ratios developed in conjunction with the calculation of FY 2013 FMRs based on 2006–2010 5-year ACS data.[5]

## VI. Request for Public Comments

HUD seeks public comments on the methodology used to calculate FY 2014 Proposed FMRs and the FMR levels for specific areas. Due to its current funding levels, HUD no longer has sufficient resources to conduct local surveys of rents to address comments filed regarding the FMR levels for specific areas. Commenters submitting comments on FMR levels must include sufficient information (including local data and a full description of the rental housing survey methodology used or a description of the methodology intended to be used to collect the necessary data) to justify any proposed changes.

For small metropolitan areas without one-year ACS data and nonmetropolitan counties, HUD has developed a methodology using mail surveys that is discussed on the bottom of the FMR Web page: *http://www.huduser.org/portal/datasets/fmr.html*. This methodology allows for the collection of as few as 100 one-bedroom, two-bedroom and three-bedroom recent mover (tenants that moved in last 24 months) units.

While HUD has not developed a specific methodology for mail surveys in areas with one-year ACS data, HUD would apply the standard established for Random-Digit Dialing (RDD) telephone rent surveys of 200 one-bedroom and two-bedroom recent mover units and the RDD confidence interval determination of the survey statistical significance of data from large-market mail surveys. Areas with statistically reliable 1 year ACS data are not considered to be good candidates for local surveys due to the size and completeness of the ACS process.

Other survey methodologies are acceptable in providing data to support comments if the survey methodology can provide statistically reliable, unbiased estimates of the gross rent. In general, recommendations for FMR changes and supporting data must reflect the rent levels that exist within the entire FMR area and should be statistically reliable.

PHAs in nonmetropolitan areas may, in certain circumstances, conduct surveys of groups of counties. HUD must approve all county-grouped surveys in advance. PHAs are cautioned that the resulting FMRs may not be identical for the counties surveyed; each individual FMR area will have a separate FMR based on the relationship of rents in that area to the combined rents in the cluster of FMR areas. In addition, PHAs are advised that counties where FMRs are based on the combined rents in the cluster of FMR areas will not have their FMRs revised unless the grouped survey results show a revised FMR statistically different from the combined rent level.

Survey samples should preferably be randomly drawn from a complete list of rental units for the FMR area. If this is not feasible, the selected sample must be drawn to be statistically representative of the entire rental housing stock of the FMR area. Surveys must include units at all rent levels and be representative by structure type (including single-family, duplex, and other small rental properties), age of housing unit, and geographic location. The 2007–2011 5-year ACS data should be used as a means of verifying if a sample is representative of the FMR area's rental housing stock.

A PHA or contractor that cannot obtain the recommended number of sample responses after reasonable efforts should consult with HUD before abandoning its survey; in such situations, HUD may find it appropriate to relax normal sample size requirements.

HUD will consider increasing manufactured home space FMRs where public comment demonstrates that 40 percent of the two-bedroom FMR is not adequate. In order to be accepted as a basis for revising the manufactured home space FMRs, comments must include a pad rental survey of the mobile home parks in the area, identify the utilities included in each park's rental fee, and provide a copy of the applicable public housing authority's utility schedule.

As stated earlier in this Notice, HUD is required to use the most recent data available when calculating FMRs. Therefore, in order to re-evaluate an area's FMR, HUD requires more current rental market data than the 2011 ACS. HUD encourages a PHA or other interested party that believes the FMR in their area is incorrect to file a comment even if they do not have the resources to provide market-wide rental data. In these instances, HUD will use the comments, should survey funding be restored, when determining the areas HUD will select for HUD-funded local area rent surveys.

## VII. Environmental Impact

This Notice involves the establishment of fair market rent schedules, which do not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this Notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Accordingly, the Fair Market Rent Schedules, which will not be codified in 24 CFR part 888, are proposed to be

[5] HUD has provided numerous detailed accounts of the calculation methodology used for Small Area Fair Market Rents. Please see our **Federal Register** notice of April 20, 2011 (76 FR 22125) for more information regarding the calculation methodology. Also, HUD's Proposed FY 2014 FMR documentation system available at (*http://www.huduser.org/portal/datasets/fmr/fmrs/docsys.html&data=fmr14*) contains detailed calculations for each ZIP code area in participating jurisdictions.

amended as shown in the Appendix to this notice:

Dated: July 30, 2013.

**Jean Lin Pao,**

*General Deputy Assistant Secretary for Policy Development and Research.*

## Fair Market Rents for the Housing Choice Voucher Program

### *Schedules B and D—General Explanatory Notes*

1. Geographic Coverage

a. Metropolitan Areas—Most FMRs are market-wide rent estimates that are intended to provide housing opportunities throughout the geographic area in which rental-housing units are in direct competition. HUD is using the metropolitan Core-Based Statistical Areas (CBSAs), which are made up of one or more counties, as defined by the Office of Management and Budget (OMB), with some modifications. HUD is generally assigning separate FMRs to the component counties of CBSA Micropolitan Areas.

b. Modifications to OMB Definitions—Following OMB guidance, the estimation procedure for the FY 2014 proposed FMRs incorporates the OMB definitions of metropolitan areas based on the CBSA standards as implemented with 2000 Census data updated through December 1, 2009, but makes adjustments to the definitions to separate subparts of these areas where FMRs or median incomes would otherwise change significantly if the new area definitions were used without modification. In CBSAs where subareas are established, it is HUD's view for programmatic purposes that the geographic extent of the housing markets are not yet the same as the geographic extent of the CBSAs, but may become so in the future as the social and economic integration of the CBSA component areas increases. Modifications to metropolitan CBSA definitions are made according to a formula as described below.

Metropolitan area CBSAs (referred to as MSAs) may be modified to allow for subarea FMRs within MSAs based on the boundaries of old FMR areas (OFAs) within the boundaries of new MSAs. (OFAs are the FMR areas defined for the FY 2005 FMRs. Collectively they include 1999-definition MSAs/Primary Metropolitan Statistical Areas (PMSAs), metro counties deleted from 1999-definition MSAs/PMSAs by HUD for FMR purposes, and counties and county parts outside of 1999-definition MSAs/PMSAs referred to as ''formerly nonmetropolitan counties.'') Subareas of MSAs are assigned their own FMRs when the subarea 2000 Census Base Rent differs by at least 5 percent from (i.e., is at most 95 percent or at least 105 percent of) the MSA 2000 Census Base Rent, or when the 2000 Census Median Family Income for the subarea differs by at least 5 percent from the MSA 2000 Census Median Family Income. MSA subareas, and the remaining portions of MSAs after subareas have been determined, are referred to as HUD Metropolitan FMR Areas (HMFAs) to distinguish these areas from OMB's official definition of MSAs.

The specific counties and New England towns and cities within each state in MSAs and HMFAs are listed in Schedule B.

2. Bedroom Size Adjustments

Schedule B shows the FMRs for zero-bedroom through four-bedroom units. The Schedule B addendum shows Small Area FMRs for all PHAs operating using Small Area FMRs (please see section V of this notice for a list of participating PHAs). The FMRs for unit sizes larger than four bedrooms are calculated by adding 15 percent to the four-bedroom FMR for each extra bedroom. For example, the FMR for a five-bedroom unit is 1.15 times the four-bedroom FMR, and the FMR for a six-bedroom unit is 1.30 times the four-bedroom FMR. FMRs for single-room-occupancy (SRO) units are 0.75 times the zero-bedroom FMR.

3. Arrangement of FMR Areas and Identification of Constituent Parts

a. The FMR areas in Schedule B are listed alphabetically by metropolitan FMR area and by nonmetropolitan county within each state. The exception FMRs for manufactured home spaces in Schedule D are listed alphabetically by state.

b. The constituent counties (and New England towns and cities) included in each metropolitan FMR area are listed immediately following the listings of the FMR dollar amounts. All constituent parts of a metropolitan FMR area that are in more than one state can be identified by consulting the listings for each applicable state.

c. Two nonmetropolitan counties are listed alphabetically on each line of the non-metropolitan county listings.

d. The New England towns and cities included in a nonmetropolitan county are listed immediately following the county name.

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SCHEDULE B - FY 2014 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 1

ALABAMA

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Anniston-Oxford, AL MSA | 494 | 516 | 679 | 877 | 913 | Calhoun |
| Auburn-Opelika, AL MSA | 532 | 535 | 724 | 997 | 1224 | Lee |
| Birmingham-Hoover, AL HMFA | 524 | 627 | 743 | 976 | 1098 | Bibb, Blount, Jefferson, St. Clair, Shelby |
| Chilton County, AL HMFA | 399 | 449 | 566 | 758 | 1002 | Chilton |
| Columbus, GA-AL MSA | 508 | 595 | 705 | 971 | 1249 | Russell |
| Decatur, AL MSA | 415 | 502 | 595 | 825 | 850 | Lawrence, Morgan |
| Dothan, AL HMFA | 411 | 440 | 566 | 755 | 933 | Geneva, Houston |
| Florence-Muscle Shoals, AL MSA | 495 | 498 | 636 | 849 | 853 | Colbert, Lauderdale |
| Gadsden, AL MSA | 355 | 458 | 596 | 742 | 837 | Etowah |
| Henry County, AL HMFA | 411 | 440 | 566 | 834 | 933 | Henry |
| Huntsville, AL MSA | 499 | 559 | 689 | 948 | 1002 | Limestone, Madison |
| Mobile, AL MSA | 622 | 649 | 770 | 1032 | 1186 | Mobile |
| Montgomery, AL MSA | 566 | 597 | 710 | 976 | 1161 | Autauga, Elmore, Lowndes, Montgomery |
| Tuscaloosa, AL MSA | 485 | 616 | 815 | 1023 | 1161 | Greene, Hale, Tuscaloosa |
| Walker County, AL HMFA | 457 | 467 | 566 | 782 | 950 | Walker |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Baldwin | 536 | 698 | 827 | 1219 | 1431 | Barbour | 428 | 431 | 583 | 726 | 779 |
| Bullock | 454 | 477 | 566 | 748 | 1002 | Butler | 428 | 431 | 566 | 822 | 844 |
| Chambers | 452 | 455 | 616 | 767 | 915 | Cherokee | 454 | 472 | 566 | 834 | 844 |
| Choctaw | 508 | 511 | 692 | 862 | 1032 | Clarke | 436 | 438 | 566 | 790 | 842 |
| Clay | 421 | 424 | 566 | 759 | 762 | Cleburne | 438 | 441 | 597 | 744 | 798 |
| Coffee | 463 | 466 | 598 | 811 | 838 | Conecuh | 433 | 436 | 566 | 834 | 837 |
| Coosa | 454 | 477 | 566 | 705 | 756 | Covington | 435 | 437 | 566 | 818 | 908 |
| Crenshaw | 422 | 425 | 575 | 811 | 858 | Cullman | 463 | 472 | 577 | 727 | 771 |
| Dale | 377 | 443 | 566 | 825 | 990 | Dallas | 361 | 418 | 566 | 724 | 923 |
| DeKalb | 350 | 455 | 589 | 736 | 939 | Escambia | 457 | 477 | 566 | 705 | 823 |
| Fayette | 454 | 477 | 566 | 743 | 1002 | Franklin | 421 | 424 | 573 | 714 | 855 |
| Jackson | 454 | 477 | 566 | 705 | 775 | Lamar | 454 | 477 | 566 | 705 | 844 |
| Macon | 416 | 418 | 566 | 705 | 802 | Marengo | 448 | 451 | 566 | 753 | 756 |
| Marion | 454 | 464 | 566 | 821 | 824 | Marshall | 424 | 427 | 568 | 783 | 785 |
| Monroe | 454 | 477 | 566 | 834 | 1002 | Perry | 433 | 436 | 566 | 826 | 844 |
| Pickens | 416 | 418 | 566 | 705 | 756 | Pike | 457 | 477 | 566 | 831 | 834 |
| Randolph | 481 | 484 | 612 | 762 | 818 | Sumter | 454 | 477 | 566 | 705 | 794 |
| Talladega | 416 | 418 | 566 | 773 | 776 | Tallapoosa | 451 | 454 | 573 | 781 | 783 |
| Washington | 454 | 477 | 566 | 834 | 849 | Wilcox | 416 | 418 | 566 | 705 | 756 |
| Winston | 454 | 477 | 566 | 775 | 1002 | | | | | | |

ALASKA

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Anchorage, AK HMFA | 774 | 895 | 1146 | 1689 | 2030 | Anchorage |
| Fairbanks, AK MSA | 789 | 980 | 1326 | 1954 | 2277 | Fairbanks North Star |
| Matanuska-Susitna Borough, AK HMFA | 706 | 817 | 1081 | 1593 | 1915 | Matanuska-Susitna |

SCHEDULE B - FY 2014 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 2

ALASKA continued

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Aleutians East | 512 | 601 | 713 | 888 | 1030 | Aleutians West | 854 | 1061 | 1436 | 1788 | 2074 |
| Bethel | 765 | 875 | 1184 | 1475 | 1582 | Bristol Bay | 725 | 747 | 1010 | 1358 | 1363 |
| Denali | 457 | 537 | 637 | 939 | 942 | Dillingham | 741 | 870 | 1032 | 1285 | 1490 |
| Haines | 587 | 663 | 818 | 1205 | 1209 | Hoonah-Angoon | 523 | 539 | 729 | 908 | 1126 |
| Juneau | 742 | 900 | 1218 | 1594 | 1894 | Kenai Peninsula | 622 | 660 | 826 | 1035 | 1354 |
| Ketchikan Gateway | 574 | 741 | 965 | 1422 | 1543 | Kodiak Island | 694 | 818 | 1023 | 1507 | 1812 |
| Lake and Peninsula | 510 | 599 | 710 | 954 | 1258 | Nome | 809 | 1005 | 1360 | 1694 | 1818 |
| North Slope | 627 | 789 | 936 | 1166 | 1501 | Northwest Arctic | 922 | 962 | 1141 | 1421 | 1525 |
| Petersburg | 595 | 612 | 828 | 1031 | 1467 | Prince of Wales-Hyder | 532 | 536 | 725 | 903 | 969 |
| Sitka | 790 | 838 | 1134 | 1580 | 1637 | Skagway | 804 | 944 | 1119 | 1394 | 1616 |
| Southeast Fairbanks | 591 | 699 | 926 | 1153 | 1592 | Valdez-Cordova | 649 | 687 | 858 | 1208 | 1305 |
| Wade Hampton | 521 | 612 | 726 | 904 | 1048 | Wrangell | 577 | 627 | 804 | 1185 | 1189 |
| Yakutat | 513 | 558 | 715 | 1054 | 1266 | Yukon-Koyukuk | 574 | 589 | 710 | 884 | 1102 |

ARIZONA

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Flagstaff, AZ MSA | 702 | 816 | 1021 | 1296 | 1651 | Coconino |
| Lake Havasu City-Kingman, AZ MSA | 475 | 587 | 749 | 1015 | 1175 | Mohave |
| *Phoenix-Mesa-Glendale, AZ MSA | 614 | 774 | 957 | 1410 | 1647 | Maricopa, Pinal |
| Prescott, AZ MSA | 546 | 620 | 784 | 1155 | 1221 | Yavapai |
| *Tucson, AZ MSA | 507 | 633 | 852 | 1251 | 1489 | Pima |
| Yuma, AZ MSA | 576 | 615 | 812 | 1197 | 1370 | Yuma |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Apache | 385 | 471 | 637 | 797 | 958 | Cochise | 641 | 662 | 828 | 1196 | 1467 |
| Gila | 515 | 537 | 723 | 1044 | 1225 | Graham | 384 | 542 | 646 | 952 | 955 |
| Greenlee | 454 | 471 | 637 | 793 | 851 | La Paz | 473 | 490 | 663 | 826 | 1029 |
| Navajo | 485 | 489 | 661 | 932 | 942 | Santa Cruz | 474 | 536 | 665 | 839 | 1178 |

ARKANSAS

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Fayetteville-Springdale-Rogers, AR HMFA | 466 | 533 | 685 | 1009 | 1190 | Benton, Madison, Washington |
| Fort Smith, AR-OK HMFA | 455 | 458 | 600 | 799 | 901 | Crawford, Sebastian |
| Franklin County, AR HMFA | 412 | 415 | 561 | 723 | 843 | Franklin |
| Grant County, AR HMFA | 404 | 473 | 561 | 827 | 994 | Grant |
| Hot Springs, AR MSA | 468 | 582 | 787 | 1047 | 1285 | Garland |
| Jonesboro, AR HMFA | 373 | 497 | 614 | 863 | 866 | Craighead |
| Little Rock-North Little Rock-Conway, AR HMFA | 532 | 615 | 739 | 1033 | 1147 | Faulkner, Lonoke, Perry, Pulaski, Saline |
| Memphis, TN-MS-AR HMFA | 576 | 658 | 780 | 1066 | 1188 | Crittenden |
| Pine Bluff, AR MSA | 416 | 489 | 651 | 815 | 997 | Cleveland, Jefferson, Lincoln |
| Poinsett County, AR HMFA | 352 | 429 | 561 | 822 | 968 | Poinsett |
| Texarkana, TX-Texarkana, AR MSA | 441 | 573 | 704 | 877 | 941 | Miller |

SCHEDULE B - FY 2014 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 3

ARKANSAS continued

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Arkansas | 427 | 430 | 582 | 725 | 826 |
| Baxter | 440 | 447 | 596 | 874 | 1056 |
| Bradley | 395 | 415 | 561 | 814 | 817 |
| Carroll | 476 | 479 | 635 | 828 | 849 |
| Clark | 427 | 430 | 567 | 752 | 758 |
| Cleburne | 452 | 455 | 583 | 766 | 894 |
| Conway | 455 | 458 | 620 | 772 | 1005 |
| Dallas | 437 | 473 | 561 | 827 | 981 |
| Drew | 412 | 415 | 561 | 807 | 994 |
| Greene | 386 | 458 | 616 | 855 | 1091 |
| Hot Spring | 437 | 473 | 561 | 748 | 867 |
| Independence | 418 | 421 | 569 | 721 | 913 |
| Jackson | 412 | 415 | 561 | 827 | 994 |
| Lafayette | 412 | 415 | 561 | 827 | 849 |
| Lee | 437 | 473 | 561 | 719 | 750 |
| Logan | 334 | 415 | 561 | 699 | 782 |
| Mississippi | 351 | 415 | 562 | 747 | 829 |
| Montgomery | 412 | 415 | 561 | 699 | 849 |
| Newton | 412 | 415 | 561 | 699 | 849 |
| Phillips | 412 | 415 | 561 | 827 | 915 |
| Polk | 431 | 433 | 561 | 751 | 754 |
| Prairie | 437 | 473 | 561 | 827 | 994 |
| St. Francis | 453 | 473 | 561 | 781 | 898 |
| Searcy | 412 | 415 | 561 | 699 | 750 |
| Sharp | 412 | 415 | 561 | 738 | 841 |
| Union | 455 | 458 | 620 | 772 | 886 |
| White | 429 | 432 | 585 | 862 | 906 |
| Yell | 412 | 415 | 561 | 827 | 994 |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Ashley | 412 | 415 | 561 | 760 | 763 |
| Boone | 412 | 415 | 561 | 784 | 941 |
| Calhoun | 412 | 415 | 561 | 699 | 849 |
| Chicot | 414 | 417 | 561 | 827 | 994 |
| Clay | 412 | 415 | 561 | 728 | 769 |
| Columbia | 412 | 415 | 561 | 790 | 793 |
| Cross | 459 | 462 | 597 | 821 | 996 |
| Desha | 412 | 415 | 561 | 770 | 965 |
| Fulton | 412 | 415 | 561 | 699 | 849 |
| Hempstead | 437 | 459 | 561 | 699 | 912 |
| Howard | 374 | 415 | 561 | 737 | 908 |
| Izard | 412 | 415 | 561 | 699 | 771 |
| Johnson | 429 | 432 | 580 | 722 | 889 |
| Lawrence | 412 | 415 | 561 | 746 | 893 |
| Little River | 444 | 458 | 619 | 771 | 1096 |
| Marion | 412 | 415 | 561 | 699 | 821 |
| Monroe | 412 | 415 | 561 | 762 | 965 |
| Nevada | 412 | 415 | 561 | 724 | 974 |
| Ouachita | 432 | 435 | 561 | 722 | 750 |
| Pike | 426 | 429 | 561 | 699 | 849 |
| Pope | 437 | 440 | 589 | 804 | 1043 |
| Randolph | 412 | 415 | 561 | 716 | 849 |
| Scott | 413 | 415 | 562 | 700 | 850 |
| Sevier | 437 | 445 | 561 | 720 | 787 |
| Stone | 413 | 415 | 562 | 722 | 850 |
| Van Buren | 437 | 473 | 561 | 712 | 849 |
| Woodruff | 412 | 415 | 561 | 827 | 849 |

CALIFORNIA

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Bakersfield-Delano, CA MSA | 619 | 623 | 815 | 1195 | 1443 | Kern |
| Chico, CA MSA | 516 | 646 | 851 | 1215 | 1507 | Butte |
| El Centro, CA MSA | 514 | 626 | 809 | 1192 | 1433 | Imperial |
| Fresno, CA MSA | 630 | 655 | 827 | 1162 | 1356 | Fresno |
| Hanford-Corcoran, CA MSA | 555 | 657 | 889 | 1264 | 1329 | Kings |
| Los Angeles-Long Beach, CA HMFA | 896 | 1083 | 1398 | 1890 | 2106 | Los Angeles |
| Madera-Chowchilla, CA MSA | 576 | 580 | 785 | 1140 | 1251 | Madera |
| Merced, CA MSA | 522 | 604 | 795 | 1171 | 1408 | Merced |
| Modesto, CA MSA | 575 | 710 | 910 | 1341 | 1556 | Stanislaus |
| Napa, CA MSA | 843 | 1057 | 1414 | 2018 | 2025 | Napa |
| Oakland-Fremont, CA HMFA | 1035 | 1255 | 1578 | 2204 | 2704 | Alameda, Contra Costa |
| *Orange County, CA HMFA | 1142 | 1312 | 1644 | 2300 | 2561 | Orange |

SCHEDULE B - FY 2014 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 4

CALIFORNIA continued

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Oxnard-Thousand Oaks-Ventura, CA MSA | 922 | 1102 | 1479 | 2043 | 2364 | Ventura |
| Redding, CA MSA | 727 | 748 | 940 | 1385 | 1544 | Shasta |
| *Riverside-San Bernardino-Ontario, CA MSA | 766 | 882 | 1120 | 1582 | 1930 | Riverside, San Bernardino |
| *Sacramento--Arden-Arcade--Roseville, CA HMFA | 717 | 854 | 1072 | 1580 | 1899 | El Dorado, Placer, Sacramento |
| Salinas, CA MSA | 871 | 980 | 1234 | 1800 | 2012 | Monterey |
| San Benito County, CA HMFA | 712 | 884 | 1196 | 1762 | 2118 | San Benito |
| San Diego-Carlsbad-San Marcos, CA MSA | 939 | 1032 | 1354 | 1969 | 2398 | San Diego |
| San Francisco, CA HMFA | 1191 | 1551 | 1956 | 2657 | 3212 | Marin, San Francisco, San Mateo |
| San Jose-Sunnyvale-Santa Clara, CA HMFA | 1105 | 1293 | 1649 | 2325 | 2636 | Santa Clara |
| San Luis Obispo-Paso Robles, CA MSA | 814 | 941 | 1215 | 1790 | 1867 | San Luis Obispo |
| Santa Barbara-Santa Maria-Goleta, CA MSA | 924 | 1061 | 1272 | 1700 | 1968 | Santa Barbara |
| Santa Cruz-Watsonville, CA MSA | 976 | 1180 | 1597 | 2058 | 2296 | Santa Cruz |
| Santa Rosa-Petaluma, CA MSA | 820 | 956 | 1251 | 1843 | 2161 | Sonoma |
| Stockton, CA MSA | 595 | 709 | 930 | 1370 | 1647 | San Joaquin |
| Vallejo-Fairfield, CA MSA | 738 | 928 | 1163 | 1714 | 2037 | Solano |
| Visalia-Porterville, CA MSA | 561 | 576 | 749 | 1104 | 1283 | Tulare |
| Yolo, CA HMFA | 757 | 817 | 1104 | 1627 | 1898 | Yolo |
| Yuba City, CA MSA | 512 | 617 | 790 | 1142 | 1351 | Sutter, Yuba |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Alpine | 665 | 675 | 913 | 1137 | 1474 | Amador | 623 | 775 | 1048 | 1391 | 1692 |
| Calaveras | 675 | 736 | 928 | 1367 | 1644 | Colusa | 596 | 600 | 812 | 1197 | 1438 |
| Del Norte | 639 | 643 | 870 | 1282 | 1399 | Glenn | 605 | 609 | 824 | 1189 | 1459 |
| Humboldt | 665 | 731 | 986 | 1453 | 1691 | Inyo | 777 | 809 | 962 | 1418 | 1704 |
| Lake | 644 | 648 | 877 | 1292 | 1306 | Lassen | 660 | 698 | 945 | 1321 | 1326 |
| Mariposa | 563 | 572 | 774 | 964 | 1249 | Mendocino | 656 | 702 | 927 | 1277 | 1544 |
| Modoc | 464 | 537 | 637 | 939 | 1120 | Mono | 924 | 1056 | 1252 | 1559 | 2021 |
| Nevada | 785 | 790 | 1047 | 1543 | 1784 | Plumas | 555 | 690 | 933 | 1162 | 1534 |
| Sierra | 630 | 639 | 865 | 1275 | 1396 | Siskiyou | 519 | 618 | 789 | 1150 | 1295 |
| Tehama | 500 | 621 | 840 | 1185 | 1358 | Trinity | 701 | 706 | 943 | 1390 | 1670 |
| Tuolumne | 575 | 698 | 944 | 1391 | 1396 | | | | | | |

COLORADO

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Boulder, CO MSA | 820 | 952 | 1178 | 1736 | 2062 | Boulder |
| Colorado Springs, CO HMFA | 501 | 622 | 807 | 1189 | 1429 | El Paso |
| Denver-Aurora-Broomfield, CO MSA | 600 | 742 | 960 | 1409 | 1633 | Adams, Arapahoe, Broomfield, Clear Creek, Denver, Douglas, Elbert, Gilpin, Jefferson, Park |
| Fort Collins-Loveland, CO MSA | 602 | 744 | 896 | 1320 | 1587 | Larimer |
| Grand Junction, CO MSA | 483 | 575 | 765 | 1127 | 1295 | Mesa |
| Greeley, CO MSA | 472 | 551 | 709 | 1040 | 1256 | Weld |
| Pueblo, CO MSA | 437 | 530 | 693 | 991 | 1070 | Pueblo |
| Teller County, CO HMFA | 534 | 689 | 861 | 1243 | 1247 | Teller |

SCHEDULE B - FY 2014 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 5

COLORADO continued

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Alamosa | 516 | 537 | 639 | 796 | 854 |
| Baca | 515 | 537 | 637 | 939 | 978 |
| Chaffee | 512 | 515 | 697 | 1027 | 1197 |
| Conejos | 515 | 537 | 637 | 793 | 851 |
| Crowley | 468 | 471 | 637 | 797 | 1128 |
| Delta | 558 | 562 | 760 | 947 | 1310 |
| Eagle | 877 | 883 | 1194 | 1545 | 1964 |
| Garfield | 822 | 828 | 1120 | 1400 | 1984 |
| Gunnison | 583 | 660 | 893 | 1112 | 1494 |
| Huerfano | 512 | 515 | 697 | 868 | 931 |
| Kiowa | 488 | 491 | 637 | 793 | 916 |
| Lake | 670 | 725 | 981 | 1222 | 1506 |
| Las Animas | 502 | 506 | 684 | 952 | 955 |
| Logan | 383 | 475 | 643 | 801 | 950 |
| Moffat | 576 | 580 | 738 | 1087 | 1091 |
| Montrose | 485 | 562 | 760 | 1073 | 1346 |
| Otero | 379 | 471 | 637 | 793 | 851 |
| Phillips | 491 | 494 | 660 | 822 | 882 |
| Prowers | 468 | 471 | 637 | 796 | 867 |
| Rio Grande | 515 | 537 | 637 | 846 | 1128 |
| Saguache | 515 | 537 | 637 | 809 | 1128 |
| San Miguel | 707 | 914 | 1119 | 1626 | 1935 |
| Summit | 734 | 995 | 1233 | 1619 | 2059 |
| Yuma | 468 | 471 | 637 | 841 | 992 |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Archuleta | 560 | 563 | 731 | 956 | 977 |
| Bent | 468 | 471 | 637 | 793 | 978 |
| Cheyenne | 468 | 471 | 637 | 873 | 978 |
| Costilla | 515 | 537 | 637 | 939 | 942 |
| Custer | 468 | 471 | 637 | 829 | 978 |
| Dolores | 515 | 537 | 637 | 939 | 978 |
| Fremont | 536 | 552 | 664 | 954 | 1029 |
| Grand | 653 | 658 | 890 | 1246 | 1251 |
| Hinsdale | 660 | 664 | 862 | 1181 | 1323 |
| Jackson | 532 | 535 | 695 | 866 | 1067 |
| Kit Carson | 468 | 471 | 637 | 793 | 1123 |
| La Plata | 696 | 741 | 922 | 1250 | 1606 |
| Lincoln | 535 | 539 | 688 | 857 | 1056 |
| Mineral | 604 | 608 | 789 | 983 | 1211 |
| Montezuma | 515 | 537 | 637 | 939 | 1128 |
| Morgan | 503 | 506 | 660 | 854 | 937 |
| Ouray | 744 | 749 | 1014 | 1494 | 1642 |
| Pitkin | 792 | 984 | 1331 | 1763 | 1779 |
| Rio Blanco | 526 | 530 | 717 | 1057 | 1109 |
| Routt | 650 | 876 | 1080 | 1478 | 1484 |
| San Juan | 543 | 622 | 842 | 1241 | 1293 |
| Sedgwick | 515 | 537 | 637 | 906 | 909 |
| Washington | 474 | 477 | 645 | 803 | 871 |

CONNECTICUT

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Components of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Bridgeport, CT HMFA | 727 | 912 | 1161 | 1519 | 1645 | Fairfield County towns of Bridgeport town, Easton town, Fairfield town, Monroe town, Shelton town, Stratford town, Trumbull town |
| Colchester-Lebanon, CT HMFA | 753 | 822 | 1112 | 1385 | 1611 | New London County towns of Colchester town, Lebanon town |
| Danbury, CT HMFA | 848 | 967 | 1308 | 1631 | 2063 | Fairfield County towns of Bethel town, Brookfield town, Danbury town, New Fairfield town, Newtown town, Redding town, Ridgefield town, Sherman town |
| *Hartford-West Hartford-East Hartford, CT HMFA | 749 | 939 | 1170 | 1457 | 1693 | Hartford County towns of Avon town, Berlin town, Bloomfield town, Bristol town, Burlington town, Canton town, East Granby town, East Hartford town, East Windsor town, Enfield town, Farmington town, Glastonbury town, Granby town, Hartford town, Hartland town, Manchester town, Marlborough town, New Britain town, Newington town, Plainville town, Rocky Hill town, Simsbury town, Southington town, South Windsor town, Suffield town, West Hartford town, Wethersfield town, Windsor town, Windsor Locks town |

SCHEDULE B - FY 2014 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 6

CONNECTICUT continued

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Components of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| | | | | | | Middlesex County towns of Chester town, Cromwell town, Durham town, East Haddam town, East Hampton town, Haddam town, Middlefield town, Middletown town, Portland town Tolland County towns of Andover town, Bolton town, Columbia town, Coventry town, Ellington town, Hebron town, Mansfield town, Somers town, Stafford town, Tolland town, Union town, Vernon town, Willington town |
| Milford-Ansonia-Seymour, CT HMFA | 931 | 982 | 1214 | 1537 | 1712 | New Haven County towns of Ansonia town, Beacon Falls town, Derby town, Milford town, Oxford town, Seymour town |
| *New Haven-Meriden, CT HMFA | 812 | 980 | 1223 | 1523 | 1690 | New Haven County towns of Bethany town, Branford town, Cheshire town, East Haven town, Guilford town, Hamden town, Madison town, Meriden town, New Haven town, North Branford town, North Haven town, Orange town, Wallingford town, West Haven town, Woodbridge town |
| Norwich-New London, CT HMFA | 701 | 788 | 1035 | 1325 | 1528 | New London County towns of Bozrah town, East Lyme town, Franklin town, Griswold town, Groton town, Ledyard town, Lisbon town, Lyme town, Montville town, New London town, North Stonington town, Norwich town, Old Lyme town, Preston town, Salem town, Sprague town, Stonington town, Voluntown town, Waterford town |
| Southern Middlesex County, CT HMFA | 958 | 965 | 1305 | 1816 | 1822 | Middlesex County towns of Clinton town, Deep River town, Essex town, Killingworth town, Old Saybrook town, Westbrook town |
| Stamford-Norwalk, CT HMFA | 1030 | 1249 | 1551 | 1932 | 2403 | Fairfield County towns of Darien town, Greenwich town, New Canaan town, Norwalk town, Stamford town, Weston town, Westport town, Wilton town |
| Waterbury, CT HMFA | 583 | 787 | 960 | 1196 | 1299 | New Haven County towns of Middlebury town, Naugatuck town, Prospect town, Southbury town, Waterbury town, Wolcott town |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Towns within nonmetropolitan counties |
|---|---|---|---|---|---|---|
| Litchfield County, CT | 750 | 762 | 978 | 1239 | 1469 | Barkhamsted town, Bethlehem town, Bridgewater town, Canaan town, Colebrook town, Cornwall town, Goshen town, Harwinton town, Kent town, Litchfield town, Morris town, New Hartford town, New Milford town, Norfolk town, North Canaan town, Plymouth town, Roxbury town, Salisbury town, Sharon town, Thomaston town, Torrington town, Warren town, Washington town, Watertown town, Winchester town, Woodbury town |
| Windham County, CT | 558 | 700 | 938 | 1168 | 1308 | Ashford town, Brooklyn town, Canterbury town, Chaplin town, Eastford town, Hampton town, Killingly town, Plainfield town, Pomfret town, Putnam town, Scotland town, Sterling town, Thompson town, Windham town, Woodstock town |

DELAWARE

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Dover, DE MSA | 600 | 768 | 910 | 1274 | 1608 | Kent |

SCHEDULE B - FY 2014 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 7

DELAWARE continued

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| *Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA.. | 799 | 942 | 1135 | 1414 | 1518 | New Castle |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Sussex | 603 | 616 | 834 | 1138 | 1325 |

DISTRICT OF COLUMBIA

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Washington-Arlington-Alexandria, DC-VA-MD HMFA | 1176 | 1239 | 1469 | 1966 | 2470 | District of Columbia |

FLORIDA

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Baker County, FL HMFA | 493 | 617 | 731 | 976 | 1062 | Baker |
| Cape Coral-Fort Myers, FL MSA | 700 | 705 | 893 | 1212 | 1247 | Lee |
| Crestview-Fort Walton Beach-Destin, FL MSA | 707 | 711 | 889 | 1310 | 1531 | Okaloosa |
| Deltona-Daytona Beach-Ormond Beach, FL MSA | 555 | 713 | 878 | 1199 | 1291 | Volusia |
| *Fort Lauderdale, FL HMFA | 762 | 992 | 1260 | 1797 | 2232 | Broward |
| Gainesville, FL MSA | 665 | 684 | 869 | 1161 | 1510 | Alachua, Gilchrist |
| Jacksonville, FL HMFA | 631 | 778 | 935 | 1233 | 1509 | Clay, Duval, Nassau, St. Johns |
| Lakeland-Winter Haven, FL MSA | 619 | 623 | 807 | 1094 | 1332 | Polk |
| Miami-Miami Beach-Kendall, FL HMFA | 747 | 910 | 1166 | 1600 | 1869 | Miami-Dade |
| Naples-Marco Island, FL MSA | 702 | 808 | 1006 | 1314 | 1618 | Collier |
| *North Port-Bradenton-Sarasota, FL MSA | 710 | 790 | 1011 | 1355 | 1591 | Manatee, Sarasota |
| Ocala, FL MSA | 507 | 628 | 787 | 1060 | 1064 | Marion |
| Orlando-Kissimmee-Sanford, FL MSA | 697 | 825 | 983 | 1311 | 1586 | Lake, Orange, Osceola, Seminole |
| Palm Bay-Melbourne-Titusville, FL MSA | 533 | 696 | 862 | 1193 | 1419 | Brevard |
| Palm Coast, FL MSA | 683 | 766 | 999 | 1301 | 1427 | Flagler |
| Panama City-Lynn Haven-Panama City Beach, FL MSA | 684 | 727 | 862 | 1174 | 1483 | Bay |
| Pensacola-Ferry Pass-Brent, FL MSA | 614 | 700 | 830 | 1119 | 1451 | Escambia, Santa Rosa |
| Port St. Lucie, FL MSA | 674 | 748 | 926 | 1273 | 1501 | Martin, St. Lucie |
| Punta Gorda, FL MSA | 511 | 673 | 859 | 1220 | 1224 | Charlotte |
| Sebastian-Vero Beach, FL MSA | 560 | 693 | 864 | 1162 | 1167 | Indian River |
| Tallahassee, FL HMFA | 709 | 754 | 910 | 1167 | 1586 | Gadsden, Jefferson, Leon |
| Tampa-St. Petersburg-Clearwater, FL MSA | 605 | 758 | 951 | 1269 | 1520 | Hernando, Hillsborough, Pasco, Pinellas |
| Wakulla County, FL HMFA | 557 | 561 | 759 | 1024 | 1344 | Wakulla |
| *West Palm Beach-Boca Raton, FL HMFA | 750 | 962 | 1202 | 1623 | 1938 | Palm Beach |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Bradford | 515 | 537 | 637 | 939 | 942 | Calhoun | 515 | 528 | 637 | 793 | 897 |
| Citrus | 582 | 586 | 747 | 989 | 1232 | Columbia | 502 | 648 | 781 | 1151 | 1383 |
| DeSoto | 528 | 552 | 654 | 892 | 895 | Dixie | 515 | 537 | 637 | 930 | 933 |
| Franklin | 568 | 593 | 703 | 1036 | 1039 | Glades | 572 | 576 | 746 | 968 | 1050 |
| Gulf | 571 | 596 | 707 | 1042 | 1045 | Hamilton | 515 | 528 | 637 | 793 | 931 |
| Hardee | 548 | 558 | 678 | 844 | 906 | Hendry | 571 | 575 | 778 | 1026 | 1182 |

SCHEDULE B - FY 2014 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 8

FLORIDA continued

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Highlands | 548 | 552 | 697 | 1027 | 1030 | Holmes | 515 | 537 | 637 | 873 | 897 |
| Jackson | 515 | 534 | 637 | 793 | 990 | Lafayette | 515 | 528 | 637 | 793 | 897 |
| Levy | 515 | 526 | 637 | 887 | 1128 | Liberty | 515 | 528 | 637 | 939 | 942 |
| Madison | 531 | 545 | 657 | 968 | 1089 | Monroe | 1003 | 1010 | 1366 | 1782 | 1826 |
| Okeechobee | 557 | 561 | 759 | 945 | 1014 | Putnam | 524 | 528 | 651 | 811 | 870 |
| Sumter | 576 | 601 | 713 | 1051 | 1125 | Suwannee | 383 | 476 | 644 | 925 | 928 |
| Taylor | 515 | 537 | 637 | 939 | 1015 | Union | 468 | 471 | 637 | 826 | 852 |
| Walton | 650 | 654 | 885 | 1173 | 1183 | Washington | 468 | 471 | 637 | 845 | 897 |

GEORGIA

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Albany, GA MSA | 513 | 581 | 700 | 969 | 995 | Baker, Dougherty, Lee, Terrell, Worth |
| Athens-Clarke County, GA MSA | 536 | 590 | 721 | 978 | 1101 | Clarke, Madison, Oconee, Oglethorpe |
| Atlanta-Sandy Springs-Marietta, GA HMFA | 693 | 756 | 896 | 1187 | 1442 | Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, Dawson, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Heard, Henry, Jasper, Newton, Paulding, Pickens, Pike, Rockdale, Spalding, Walton |
| Augusta-Richmond County, GA-SC MSA | 543 | 612 | 730 | 993 | 1229 | Burke, Columbia, McDuffie, Richmond |
| Brunswick, GA MSA | 492 | 495 | 670 | 834 | 938 | Brantley, Glynn, McIntosh |
| Butts County, GA HMFA | 565 | 568 | 769 | 990 | 1028 | Butts |
| Chattanooga, TN-GA MSA | 452 | 546 | 679 | 923 | 1041 | Catoosa, Dade, Walker |
| Columbus, GA-AL MSA | 508 | 595 | 705 | 971 | 1249 | Chattahoochee, Harris, Marion, Muscogee |
| Dalton, GA HMFA | 529 | 572 | 697 | 895 | 1115 | Whitfield |
| Gainesville, GA MSA | 640 | 644 | 815 | 1058 | 1089 | Hall |
| Haralson County, GA HMFA | 467 | 470 | 636 | 894 | 1023 | Haralson |
| Hinesville-Fort Stewart, GA HMFA | 575 | 598 | 747 | 1054 | 1310 | Liberty |
| Lamar County, GA HMFA | 492 | 536 | 636 | 937 | 1038 | Lamar |
| Long County, GA HMFA | 489 | 509 | 636 | 870 | 1126 | Long |
| Macon, GA MSA | 512 | 616 | 730 | 1008 | 1102 | Bibb, Crawford, Jones, Twiggs |
| Meriwether County, GA HMFA | 492 | 536 | 636 | 815 | 850 | Meriwether |
| Monroe County, GA HMFA | 457 | 549 | 651 | 959 | 1153 | Monroe |
| Murray County, GA HMFA | 491 | 495 | 667 | 840 | 1170 | Murray |
| Rome, GA MSA | 495 | 498 | 674 | 839 | 1192 | Floyd |
| Savannah, GA MSA | 591 | 725 | 860 | 1147 | 1360 | Bryan, Chatham, Effingham |
| Valdosta, GA MSA | 575 | 579 | 719 | 921 | 1096 | Brooks, Echols, Lanier, Lowndes |
| Warner Robins, GA MSA | 598 | 616 | 760 | 975 | 1165 | Houston |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Appling | 514 | 536 | 636 | 792 | 929 | Atkinson | 378 | 470 | 636 | 792 | 850 |
| Bacon | 491 | 495 | 636 | 792 | 850 | Baldwin | 485 | 559 | 710 | 920 | 949 |
| Banks | 567 | 592 | 702 | 964 | 1159 | Ben Hill | 496 | 499 | 663 | 826 | 886 |
| Berrien | 467 | 470 | 636 | 792 | 1113 | Bleckley | 467 | 470 | 636 | 937 | 963 |
| Bulloch | 504 | 569 | 725 | 1050 | 1275 | Calhoun | 467 | 470 | 636 | 792 | 963 |
| Camden | 597 | 601 | 813 | 1130 | 1297 | Candler | 467 | 470 | 636 | 792 | 959 |
| Charlton | 471 | 475 | 642 | 892 | 972 | Chattooga | 467 | 470 | 636 | 854 | 1126 |

SCHEDULE B - FY 2014 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 9

GEORGIA continued

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Clay | 519 | 523 | 661 | 823 | 1001 |
| Coffee | 474 | 477 | 636 | 925 | 1118 |
| Cook | 529 | 552 | 655 | 965 | 968 |
| Decatur | 528 | 552 | 654 | 846 | 874 |
| Dooly | 514 | 536 | 636 | 937 | 996 |
| Elbert | 514 | 519 | 636 | 937 | 963 |
| Evans | 513 | 516 | 636 | 801 | 850 |
| Franklin | 467 | 470 | 636 | 873 | 1126 |
| Glascock | 467 | 470 | 636 | 792 | 850 |
| Grady | 467 | 470 | 636 | 794 | 941 |
| Habersham | 514 | 536 | 636 | 937 | 1126 |
| Hart | 467 | 470 | 636 | 896 | 1126 |
| Jackson | 570 | 574 | 777 | 968 | 1107 |
| Jefferson | 514 | 521 | 636 | 792 | 850 |
| Johnson | 467 | 470 | 636 | 792 | 884 |
| Lincoln | 467 | 470 | 636 | 937 | 1126 |
| Macon | 514 | 536 | 636 | 792 | 1041 |
| Mitchell | 506 | 509 | 689 | 858 | 921 |
| Morgan | 565 | 590 | 699 | 1030 | 1195 |
| Pierce | 475 | 478 | 636 | 792 | 1126 |
| Pulaski | 467 | 470 | 636 | 937 | 963 |
| Quitman | 514 | 536 | 636 | 937 | 963 |
| Randolph | 467 | 470 | 636 | 840 | 963 |
| Screven | 467 | 470 | 636 | 845 | 850 |
| Stephens | 504 | 507 | 686 | 946 | 1215 |
| Sumter | 514 | 526 | 636 | 869 | 872 |
| Taliaferro | 634 | 638 | 820 | 1021 | 1242 |
| Taylor | 378 | 495 | 636 | 917 | 963 |
| Thomas | 517 | 521 | 698 | 974 | 977 |
| Toombs | 487 | 490 | 636 | 826 | 887 |
| Treutlen | 491 | 495 | 636 | 792 | 850 |
| Turner | 471 | 474 | 636 | 792 | 1126 |
| Upson | 514 | 536 | 636 | 937 | 1126 |
| Warren | 514 | 521 | 636 | 937 | 940 |
| Wayne | 467 | 470 | 636 | 795 | 850 |
| Wheeler | 491 | 495 | 636 | 917 | 1080 |
| Wilcox | 467 | 470 | 636 | 792 | 1092 |
| Wilkinson | 467 | 470 | 636 | 792 | 963 |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Clinch | 467 | 470 | 636 | 917 | 963 |
| Colquitt | 471 | 474 | 636 | 937 | 940 |
| Crisp | 485 | 488 | 642 | 800 | 1062 |
| Dodge | 514 | 536 | 636 | 937 | 1126 |
| Early | 479 | 482 | 636 | 937 | 1069 |
| Emanuel | 467 | 470 | 636 | 885 | 1001 |
| Fannin | 467 | 470 | 636 | 800 | 1126 |
| Gilmer | 528 | 531 | 695 | 866 | 1231 |
| Gordon | 540 | 543 | 705 | 951 | 1175 |
| Greene | 479 | 483 | 653 | 911 | 973 |
| Hancock | 467 | 470 | 636 | 792 | 850 |
| Irwin | 467 | 470 | 636 | 792 | 850 |
| Jeff Davis | 514 | 536 | 636 | 866 | 870 |
| Jenkins | 491 | 495 | 636 | 897 | 985 |
| Laurens | 514 | 536 | 636 | 880 | 883 |
| Lumpkin | 548 | 551 | 746 | 1006 | 1010 |
| Miller | 467 | 470 | 636 | 912 | 938 |
| Montgomery | 514 | 536 | 636 | 792 | 963 |
| Peach | 381 | 474 | 641 | 873 | 876 |
| Polk | 493 | 496 | 671 | 871 | 981 |
| Putnam | 652 | 671 | 807 | 1186 | 1190 |
| Rabun | 456 | 634 | 767 | 988 | 1025 |
| Schley | 467 | 470 | 636 | 887 | 1126 |
| Seminole | 514 | 536 | 636 | 873 | 876 |
| Stewart | 514 | 536 | 636 | 885 | 963 |
| Talbot | 524 | 528 | 714 | 889 | 1081 |
| Tattnall | 514 | 536 | 636 | 881 | 894 |
| Telfair | 467 | 470 | 636 | 792 | 907 |
| Tift | 504 | 509 | 654 | 828 | 1073 |
| Towns | 527 | 530 | 682 | 849 | 979 |
| Troup | 565 | 580 | 700 | 956 | 960 |
| Union | 530 | 534 | 722 | 937 | 965 |
| Ware | 422 | 473 | 640 | 797 | 855 |
| Washington | 514 | 536 | 636 | 831 | 1126 |
| Webster | 491 | 495 | 636 | 792 | 963 |
| White | 476 | 480 | 649 | 892 | 983 |
| Wilkes | 479 | 482 | 636 | 937 | 1126 |

HAWAII

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| *Honolulu, HI MSA | 1267 | 1382 | 1820 | 2682 | 3078 | Honolulu |

SCHEDULE B - FY 2014 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 10

HAWAII continued

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Hawaii | 619 | 780 | 950 | 1281 | 1604 | Kalawao | 458 | 509 | 637 | 844 | 965 |
| Kauai | 1170 | 1180 | 1597 | 2173 | 2574 | Maui | 868 | 977 | 1262 | 1739 | 1746 |

IDAHO

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Boise City-Nampa, ID HMFA | 428 | 572 | 719 | 1059 | 1178 | Ada, Boise, Canyon, Owyhee |
| Coeur d'Alene, ID MSA | 499 | 595 | 753 | 1072 | 1321 | Kootenai |
| Gem County, ID HMFA | 380 | 472 | 639 | 942 | 1132 | Gem |
| Idaho Falls, ID MSA | 413 | 488 | 660 | 931 | 1169 | Bonneville, Jefferson |
| Lewiston, ID-WA MSA | 403 | 510 | 659 | 853 | 1167 | Nez Perce |
| Logan, UT-ID MSA | 478 | 481 | 637 | 917 | 1118 | Franklin |
| Pocatello, ID MSA | 379 | 477 | 637 | 939 | 1128 | Bannock, Power |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Adams | 468 | 471 | 637 | 939 | 1113 | Bear Lake | 468 | 471 | 637 | 939 | 1113 |
| Benewah | 510 | 537 | 637 | 855 | 1128 | Bingham | 510 | 532 | 637 | 939 | 942 |
| Blaine | 698 | 703 | 926 | 1292 | 1361 | Bonner | 481 | 581 | 689 | 1004 | 1220 |
| Boundary | 468 | 471 | 637 | 793 | 1113 | Butte | 484 | 487 | 637 | 925 | 1113 |
| Camas | 499 | 502 | 637 | 880 | 1113 | Caribou | 499 | 502 | 637 | 891 | 1113 |
| Cassia | 379 | 472 | 637 | 939 | 1128 | Clark | 499 | 502 | 637 | 939 | 1113 |
| Clearwater | 510 | 537 | 637 | 877 | 1113 | Custer | 468 | 471 | 637 | 876 | 1113 |
| Elmore | 468 | 471 | 637 | 911 | 1128 | Fremont | 472 | 475 | 643 | 801 | 864 |
| Gooding | 493 | 496 | 637 | 896 | 1128 | Idaho | 484 | 487 | 637 | 892 | 1128 |
| Jerome | 422 | 493 | 641 | 934 | 954 | Latah | 508 | 511 | 655 | 965 | 1160 |
| Lemhi | 510 | 537 | 637 | 939 | 1113 | Lewis | 515 | 521 | 637 | 939 | 942 |
| Lincoln | 510 | 537 | 637 | 865 | 1128 | Madison | 504 | 508 | 652 | 961 | 1155 |
| Minidoka | 510 | 537 | 637 | 939 | 1003 | Oneida | 510 | 537 | 637 | 916 | 1087 |
| Payette | 480 | 483 | 654 | 917 | 1104 | Shoshone | 465 | 518 | 637 | 820 | 906 |
| Teton | 552 | 582 | 690 | 928 | 1222 | Twin Falls | 463 | 509 | 662 | 869 | 1129 |
| Valley | 480 | 580 | 688 | 1014 | 1219 | Washington | 468 | 471 | 637 | 939 | 1113 |

ILLINOIS

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Bloomington-Normal, IL MSA | 606 | 657 | 865 | 1217 | 1471 | McLean |
| Bond County, IL HMFA | 449 | 508 | 687 | 856 | 918 | Bond |
| Cape Girardeau-Jackson, MO-IL MSA | 404 | 502 | 679 | 881 | 1074 | Alexander |
| Champaign-Urbana, IL MSA | 565 | 708 | 862 | 1111 | 1496 | Champaign, Ford, Piatt |
| Chicago-Joliet-Naperville, IL HMFA | 727 | 826 | 979 | 1248 | 1455 | Cook, DuPage, Kane, Lake, McHenry, Will |
| Danville, IL MSA | 520 | 568 | 711 | 903 | 950 | Vermilion |
| Davenport-Moline-Rock Island, IA-IL MSA | 431 | 533 | 683 | 921 | 969 | Henry, Mercer, Rock Island |
| DeKalb County, IL HMFA | 572 | 676 | 876 | 1242 | 1448 | DeKalb |
| Decatur, IL MSA | 411 | 525 | 684 | 952 | 1044 | Macon |

SCHEDULE B - FY 2014 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 11

ILLINOIS continued

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Grundy County, IL HMFA | 543 | 675 | 913 | 1336 | 1341 | Grundy |
| Kankakee-Bradley, IL MSA | 452 | 574 | 758 | 1067 | 1287 | Kankakee |
| Kendall County, IL HMFA | 594 | 750 | 999 | 1472 | 1539 | Kendall |
| Macoupin County, IL HMFA | 416 | 483 | 637 | 926 | 1013 | Macoupin |
| Peoria, IL MSA | 431 | 565 | 725 | 937 | 1125 | Marshall, Peoria, Stark, Tazewell, Woodford |
| Rockford, IL MSA | 490 | 560 | 754 | 1029 | 1168 | Boone, Winnebago |
| Springfield, IL MSA | 472 | 584 | 743 | 972 | 1024 | Menard, Sangamon |
| St. Louis, MO-IL HMFA | 532 | 631 | 814 | 1061 | 1203 | Calhoun, Clinton, Jersey, Madison, Monroe, St. Clair |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Adams | 379 | 471 | 637 | 877 | 1023 | Brown | 463 | 575 | 778 | 969 | 1143 |
| Bureau | 396 | 499 | 665 | 919 | 922 | Carroll | 423 | 471 | 637 | 793 | 851 |
| Cass | 478 | 481 | 651 | 811 | 918 | Christian | 493 | 497 | 672 | 837 | 1068 |
| Clark | 463 | 515 | 697 | 868 | 931 | Clay | 423 | 537 | 637 | 793 | 936 |
| Coles | 490 | 493 | 667 | 983 | 1034 | Crawford | 423 | 537 | 637 | 925 | 928 |
| Cumberland | 423 | 537 | 637 | 863 | 866 | De Witt | 423 | 471 | 637 | 834 | 1016 |
| Douglas | 461 | 513 | 694 | 864 | 953 | Edgar | 471 | 474 | 637 | 876 | 1128 |
| Edwards | 423 | 512 | 637 | 793 | 936 | Effingham | 468 | 471 | 637 | 939 | 1095 |
| Fayette | 483 | 520 | 637 | 793 | 964 | Franklin | 379 | 471 | 637 | 793 | 1062 |
| Fulton | 496 | 499 | 642 | 822 | 1083 | Gallatin | 423 | 537 | 637 | 939 | 942 |
| Greene | 423 | 537 | 637 | 793 | 1128 | Hamilton | 423 | 537 | 637 | 793 | 936 |
| Hancock | 379 | 510 | 637 | 793 | 851 | Hardin | 423 | 471 | 637 | 793 | 936 |
| Henderson | 423 | 526 | 637 | 795 | 851 | Iroquois | 480 | 483 | 649 | 897 | 1034 |
| Jackson | 419 | 504 | 682 | 903 | 1013 | Jasper | 423 | 537 | 637 | 939 | 1078 |
| Jefferson | 485 | 506 | 637 | 859 | 1107 | Jo Daviess | 423 | 537 | 637 | 846 | 851 |
| Johnson | 423 | 537 | 637 | 793 | 991 | Knox | 379 | 471 | 637 | 793 | 1128 |
| La Salle | 456 | 567 | 767 | 1048 | 1052 | Lawrence | 515 | 537 | 637 | 939 | 942 |
| Lee | 495 | 499 | 640 | 907 | 910 | Livingston | 479 | 511 | 680 | 920 | 923 |
| Logan | 424 | 472 | 639 | 889 | 892 | McDonough | 421 | 523 | 708 | 887 | 1064 |
| Marion | 423 | 485 | 637 | 906 | 910 | Mason | 423 | 471 | 637 | 793 | 1041 |
| Massac | 445 | 496 | 671 | 836 | 1188 | Montgomery | 452 | 574 | 681 | 848 | 1126 |
| Morgan | 387 | 481 | 651 | 811 | 870 | Moultrie | 423 | 537 | 637 | 893 | 930 |
| Ogle | 479 | 532 | 689 | 981 | 1153 | Perry | 468 | 471 | 637 | 801 | 1076 |
| Pike | 467 | 537 | 637 | 835 | 1114 | Pope | 423 | 537 | 637 | 939 | 942 |
| Pulaski | 423 | 537 | 637 | 793 | 851 | Putnam | 433 | 551 | 653 | 813 | 873 |
| Randolph | 433 | 485 | 652 | 879 | 996 | Richland | 423 | 471 | 637 | 909 | 912 |
| Saline | 468 | 471 | 637 | 917 | 1053 | Schuyler | 423 | 537 | 637 | 939 | 942 |
| Scott | 423 | 484 | 637 | 884 | 1056 | Shelby | 423 | 471 | 637 | 793 | 944 |
| Stephenson | 433 | 483 | 653 | 813 | 1006 | Union | 423 | 471 | 637 | 842 | 851 |
| Wabash | 433 | 482 | 652 | 812 | 929 | Warren | 459 | 519 | 692 | 1013 | 1017 |
| Washington | 439 | 497 | 662 | 856 | 972 | Wayne | 423 | 537 | 637 | 864 | 936 |
| White | 421 | 537 | 637 | 797 | 872 | Whiteside | 497 | 535 | 684 | 852 | 946 |
| Williamson | 477 | 480 | 650 | 918 | 1151 | | | | | | |

SCHEDULE B - FY 2014 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 12

INDIANA

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Anderson, IN MSA | 412 | 500 | 677 | 903 | 985 | Madison |
| Bloomington, IN HMFA | 571 | 624 | 779 | 1087 | 1380 | Monroe |
| Carroll County, IN HMFA | 506 | 528 | 626 | 895 | 898 | Carroll |
| Cincinnati-Middleton, OH-KY-IN HMFA | 442 | 554 | 735 | 1018 | 1121 | Dearborn, Franklin, Ohio |
| Columbus, IN MSA | 608 | 665 | 827 | 1087 | 1122 | Bartholomew |
| Elkhart-Goshen, IN MSA | 459 | 569 | 742 | 961 | 1130 | Elkhart |
| Evansville, IN-KY HMFA | 533 | 572 | 739 | 941 | 1028 | Posey, Vanderburgh, Warrick |
| Fort Wayne, IN MSA | 474 | 520 | 664 | 854 | 969 | Allen, Wells, Whitley |
| Gary, IN HMFA | 478 | 645 | 803 | 1006 | 1073 | Lake, Newton, Porter |
| Gibson County, IN HMFA | 452 | 474 | 626 | 838 | 841 | Gibson |
| Greene County, IN HMFA | 372 | 463 | 626 | 780 | 942 | Greene |
| Indianapolis, IN HMFA | 506 | 625 | 777 | 1036 | 1209 | Boone, Brown, Hamilton, Hancock, Hendricks, Johnson, Marion, Morgan, Shelby |
| Jasper County, IN HMFA | 507 | 511 | 691 | 861 | 923 | Jasper |
| Kokomo, IN MSA | 472 | 490 | 663 | 888 | 970 | Howard, Tipton |
| Lafayette, IN HMFA | 540 | 618 | 780 | 1021 | 1283 | Benton, Tippecanoe |
| Louisville, KY-IN HMFA | 485 | 567 | 705 | 976 | 1104 | Clark, Floyd, Harrison |
| Michigan City-La Porte, IN MSA | 458 | 531 | 719 | 952 | 961 | LaPorte |
| Muncie, IN MSA | 465 | 518 | 668 | 877 | 1183 | Delaware |
| Owen County, IN HMFA | 454 | 487 | 626 | 802 | 1109 | Owen |
| Putnam County, IN HMFA | 506 | 514 | 626 | 922 | 1059 | Putnam |
| South Bend-Mishawaka, IN HMFA | 490 | 558 | 714 | 895 | 954 | St. Joseph |
| Sullivan County, IN HMFA | 506 | 528 | 626 | 919 | 922 | Sullivan |
| Terre Haute, IN HMFA | 434 | 540 | 730 | 909 | 1067 | Clay, Vermillion, Vigo |
| Washington County, IN HMFA | 430 | 508 | 626 | 881 | 884 | Washington |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Adams | 408 | 495 | 626 | 830 | 1019 | Blackford | 408 | 463 | 626 | 780 | 1106 |
| Cass | 408 | 463 | 626 | 780 | 1107 | Clinton | 397 | 494 | 668 | 852 | 959 |
| Crawford | 408 | 463 | 626 | 780 | 889 | Daviess | 408 | 463 | 626 | 899 | 902 |
| Decatur | 406 | 505 | 683 | 863 | 913 | DeKalb | 399 | 481 | 626 | 891 | 1049 |
| Dubois | 408 | 472 | 626 | 922 | 933 | Fayette | 446 | 481 | 644 | 825 | 861 |
| Fountain | 408 | 528 | 626 | 885 | 889 | Fulton | 426 | 523 | 653 | 813 | 873 |
| Grant | 390 | 464 | 626 | 828 | 908 | Henry | 463 | 467 | 626 | 796 | 863 |
| Huntington | 401 | 484 | 645 | 827 | 862 | Jackson | 406 | 504 | 682 | 910 | 1050 |
| Jay | 408 | 483 | 626 | 871 | 918 | Jefferson | 372 | 485 | 626 | 855 | 892 |
| Jennings | 402 | 506 | 676 | 872 | 968 | Knox | 467 | 474 | 626 | 781 | 882 |
| Kosciusko | 440 | 504 | 674 | 872 | 996 | LaGrange | 393 | 489 | 661 | 823 | 905 |
| Lawrence | 382 | 496 | 642 | 851 | 918 | Marshall | 439 | 500 | 673 | 838 | 899 |
| Martin | 408 | 528 | 626 | 922 | 973 | Miami | 372 | 528 | 626 | 867 | 1019 |
| Montgomery | 426 | 513 | 693 | 971 | 989 | Noble | 399 | 485 | 637 | 793 | 1093 |
| Orange | 408 | 463 | 626 | 853 | 1062 | Parke | 408 | 463 | 626 | 851 | 1109 |
| Perry | 408 | 471 | 626 | 888 | 904 | Pike | 408 | 528 | 626 | 922 | 1041 |
| Pulaski | 372 | 465 | 626 | 813 | 837 | Randolph | 408 | 482 | 626 | 872 | 1025 |
| Ripley | 375 | 466 | 630 | 785 | 903 | Rush | 408 | 463 | 626 | 804 | 837 |
| Scott | 421 | 477 | 646 | 886 | 983 | Spencer | 372 | 463 | 626 | 780 | 837 |

SCHEDULE B - FY 2014 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 13

INDIANA continued

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Starke | 445 | 537 | 637 | 828 | 851 | Steuben | 441 | 501 | 676 | 842 | 943 |
| Switzerland | 408 | 463 | 626 | 922 | 972 | Union | 408 | 528 | 626 | 922 | 1109 |
| Wabash | 408 | 463 | 626 | 780 | 837 | Warren | 408 | 528 | 626 | 852 | 855 |
| Wayne | 480 | 500 | 638 | 842 | 948 | White | 408 | 528 | 626 | 851 | 854 |

IOWA

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Ames, IA MSA | 491 | 575 | 717 | 1014 | 1186 | Story |
| Benton County, IA HMFA | 422 | 469 | 579 | 752 | 923 | Benton |
| Bremer County, IA HMFA | 446 | 480 | 650 | 888 | 892 | Bremer |
| Cedar Rapids, IA HMFA | 390 | 484 | 655 | 887 | 987 | Linn |
| Davenport-Moline-Rock Island, IA-IL MSA | 431 | 533 | 683 | 921 | 969 | Scott |
| Des Moines-West Des Moines, IA MSA | 525 | 631 | 783 | 1090 | 1161 | Dallas, Guthrie, Madison, Polk, Warren |
| Dubuque, IA MSA | 452 | 559 | 725 | 972 | 1129 | Dubuque |
| Iowa City, IA HMFA | 558 | 668 | 851 | 1254 | 1507 | Johnson |
| Jones County, IA HMFA | 344 | 428 | 579 | 798 | 905 | Jones |
| Omaha-Council Bluffs, NE-IA HMFA | 470 | 629 | 790 | 1059 | 1177 | Harrison, Mills, Pottawattamie |
| Sioux City, IA-NE-SD MSA | 414 | 541 | 696 | 914 | 1027 | Woodbury |
| Washington County, IA HMFA | 429 | 512 | 645 | 950 | 1086 | Washington |
| Waterloo-Cedar Falls, IA HMFA | 495 | 573 | 720 | 957 | 1275 | Black Hawk, Grundy |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Adair | 419 | 458 | 619 | 863 | 866 | Adams | 423 | 461 | 624 | 777 | 862 |
| Allamakee | 392 | 488 | 579 | 853 | 886 | Appanoose | 425 | 428 | 579 | 734 | 774 |
| Audubon | 392 | 466 | 579 | 721 | 956 | Boone | 374 | 464 | 628 | 823 | 975 |
| Buchanan | 432 | 435 | 579 | 750 | 939 | Buena Vista | 413 | 480 | 610 | 768 | 888 |
| Butler | 392 | 488 | 579 | 853 | 884 | Calhoun | 392 | 443 | 579 | 784 | 787 |
| Carroll | 458 | 461 | 579 | 721 | 827 | Cass | 386 | 474 | 579 | 784 | 834 |
| Cedar | 430 | 469 | 635 | 822 | 896 | Cerro Gordo | 396 | 492 | 666 | 871 | 890 |
| Cherokee | 392 | 434 | 579 | 721 | 774 | Chickasaw | 392 | 470 | 579 | 853 | 856 |
| Clarke | 434 | 474 | 641 | 798 | 1135 | Clay | 392 | 428 | 579 | 782 | 939 |
| Clayton | 410 | 488 | 579 | 816 | 936 | Clinton | 386 | 499 | 624 | 791 | 993 |
| Crawford | 392 | 488 | 579 | 747 | 1025 | Davis | 421 | 499 | 622 | 775 | 859 |
| Decatur | 432 | 454 | 579 | 853 | 1025 | Delaware | 468 | 474 | 579 | 842 | 863 |
| Des Moines | 501 | 504 | 682 | 849 | 918 | Dickinson | 408 | 445 | 602 | 847 | 854 |
| Emmet | 418 | 489 | 617 | 780 | 852 | Fayette | 361 | 487 | 579 | 744 | 783 |
| Floyd | 392 | 448 | 579 | 816 | 818 | Franklin | 425 | 428 | 579 | 808 | 990 |
| Fremont | 392 | 470 | 579 | 805 | 883 | Greene | 400 | 436 | 590 | 735 | 1045 |
| Hamilton | 442 | 482 | 652 | 812 | 1066 | Hancock | 392 | 428 | 579 | 721 | 842 |
| Hardin | 392 | 446 | 579 | 723 | 774 | Henry | 405 | 482 | 598 | 829 | 832 |
| Howard | 392 | 428 | 579 | 721 | 774 | Humboldt | 392 | 428 | 579 | 816 | 819 |
| Ida | 392 | 439 | 579 | 769 | 774 | Iowa | 392 | 456 | 579 | 853 | 994 |
| Jackson | 392 | 488 | 579 | 853 | 856 | Jasper | 390 | 501 | 655 | 831 | 919 |

SCHEDULE B - FY 2014 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 14

IOWA continued

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Jefferson | 433 | 477 | 639 | 796 | 854 |
| Kossuth | 392 | 428 | 579 | 769 | 811 |
| Louisa | 419 | 462 | 618 | 770 | 954 |
| Lyon | 392 | 483 | 579 | 721 | 991 |
| Marion | 566 | 577 | 701 | 873 | 1242 |
| Mitchell | 392 | 488 | 579 | 853 | 856 |
| Monroe | 401 | 438 | 592 | 737 | 818 |
| Muscatine | 483 | 527 | 713 | 978 | 1057 |
| Osceola | 416 | 501 | 614 | 765 | 821 |
| Palo Alto | 392 | 486 | 579 | 853 | 1025 |
| Pocahontas | 392 | 449 | 579 | 721 | 1025 |
| Ringgold | 392 | 469 | 579 | 726 | 878 |
| Shelby | 392 | 447 | 579 | 750 | 870 |
| Tama | 404 | 441 | 596 | 746 | 871 |
| Union | 392 | 432 | 579 | 777 | 945 |
| Wapello | 420 | 495 | 650 | 830 | 869 |
| Webster | 466 | 469 | 579 | 823 | 858 |
| Winneshiek | 425 | 428 | 579 | 757 | 1025 |
| Wright | 392 | 456 | 579 | 721 | 774 |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Keokuk | 392 | 440 | 579 | 806 | 809 |
| Lee | 399 | 435 | 589 | 808 | 811 |
| Lucas | 392 | 428 | 579 | 761 | 973 |
| Mahaska | 451 | 454 | 585 | 748 | 899 |
| Marshall | 438 | 508 | 625 | 807 | 888 |
| Monona | 392 | 428 | 579 | 773 | 776 |
| Montgomery | 425 | 428 | 579 | 842 | 845 |
| O'Brien | 429 | 471 | 579 | 839 | 842 |
| Page | 392 | 452 | 579 | 788 | 791 |
| Plymouth | 423 | 496 | 625 | 866 | 869 |
| Poweshiek | 437 | 516 | 645 | 847 | 898 |
| Sac | 347 | 434 | 579 | 750 | 774 |
| Sioux | 392 | 457 | 579 | 794 | 797 |
| Taylor | 392 | 488 | 579 | 853 | 856 |
| Van Buren | 392 | 488 | 579 | 813 | 816 |
| Wayne | 392 | 428 | 579 | 853 | 856 |
| Winnebago | 392 | 460 | 579 | 853 | 886 |
| Worth | 383 | 488 | 579 | 733 | 774 |

KANSAS

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Franklin County, KS HMFA | 467 | 579 | 784 | 976 | 1247 | Franklin |
| Kansas City, MO-KS HMFA | 534 | 687 | 852 | 1168 | 1300 | Johnson, Leavenworth, Linn, Miami, Wyandotte |
| Lawrence, KS MSA | 476 | 601 | 779 | 1141 | 1253 | Douglas |
| Manhattan, KS MSA | 594 | 598 | 786 | 1132 | 1392 | Geary, Pottawatomie, Riley |
| St. Joseph, MO-KS MSA | 516 | 557 | 745 | 955 | 1176 | Doniphan |
| Sumner County, KS HMFA | 492 | 495 | 670 | 892 | 1187 | Sumner |
| Topeka, KS MSA | 424 | 537 | 713 | 1007 | 1223 | Jackson, Jefferson, Osage, Shawnee, Wabaunsee |
| Wichita, KS HMFA | 450 | 556 | 740 | 1021 | 1125 | Butler, Harvey, Sedgwick |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Allen | 404 | 525 | 622 | 857 | 860 |
| Atchison | 370 | 465 | 622 | 917 | 920 |
| Barton | 502 | 524 | 622 | 821 | 1070 |
| Brown | 404 | 460 | 622 | 852 | 855 |
| Chautauqua | 404 | 525 | 622 | 872 | 904 |
| Cheyenne | 404 | 460 | 622 | 775 | 831 |
| Clay | 528 | 531 | 719 | 895 | 961 |
| Coffey | 404 | 460 | 622 | 841 | 844 |
| Cowley | 416 | 489 | 640 | 855 | 858 |
| Decatur | 404 | 462 | 622 | 775 | 904 |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Anderson | 404 | 467 | 622 | 917 | 1102 |
| Barber | 404 | 460 | 622 | 818 | 904 |
| Bourbon | 405 | 468 | 633 | 788 | 1029 |
| Chase | 404 | 464 | 622 | 883 | 886 |
| Cherokee | 404 | 460 | 622 | 844 | 1001 |
| Clark | 404 | 513 | 622 | 809 | 1102 |
| Cloud | 404 | 475 | 622 | 917 | 920 |
| Comanche | 404 | 525 | 622 | 809 | 904 |
| Crawford | 435 | 518 | 669 | 986 | 1171 |
| Dickinson | 404 | 475 | 622 | 859 | 1102 |

SCHEDULE B - FY 2014 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 15

KANSAS continued

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Edwards | 404 | 460 | 622 | 775 | 1041 |
| Ellis | 447 | 464 | 628 | 876 | 947 |
| Finney | 428 | 514 | 659 | 833 | 1117 |
| Gove | 404 | 525 | 622 | 790 | 904 |
| Grant | 404 | 462 | 622 | 895 | 904 |
| Greeley | 404 | 462 | 622 | 775 | 849 |
| Hamilton | 441 | 505 | 679 | 846 | 987 |
| Haskell | 424 | 483 | 653 | 813 | 1020 |
| Jewell | 404 | 525 | 622 | 849 | 888 |
| Kingman | 404 | 525 | 622 | 775 | 1056 |
| Labette | 404 | 460 | 622 | 775 | 831 |
| Lincoln | 404 | 508 | 622 | 775 | 831 |
| Lyon | 377 | 468 | 633 | 856 | 859 |
| Marion | 404 | 460 | 622 | 775 | 831 |
| Meade | 404 | 460 | 622 | 775 | 831 |
| Montgomery | 496 | 500 | 622 | 838 | 980 |
| Morton | 404 | 481 | 622 | 775 | 831 |
| Neosho | 404 | 460 | 622 | 825 | 831 |
| Norton | 404 | 525 | 622 | 889 | 904 |
| Ottawa | 404 | 514 | 622 | 917 | 1102 |
| Phillips | 404 | 483 | 622 | 906 | 1044 |
| Rawlins | 404 | 460 | 622 | 775 | 904 |
| Republic | 404 | 460 | 622 | 775 | 831 |
| Rooks | 404 | 519 | 622 | 775 | 831 |
| Russell | 446 | 508 | 687 | 896 | 1028 |
| Scott | 404 | 462 | 622 | 917 | 920 |
| Sheridan | 404 | 460 | 622 | 775 | 831 |
| Smith | 404 | 496 | 622 | 917 | 920 |
| Stanton | 404 | 462 | 622 | 840 | 885 |
| Thomas | 404 | 525 | 622 | 892 | 1102 |
| Wallace | 404 | 462 | 622 | 775 | 904 |
| Wichita | 447 | 519 | 688 | 857 | 1000 |
| Woodson | 404 | 460 | 622 | 917 | 920 |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Elk | 404 | 525 | 622 | 917 | 920 |
| Ellsworth | 404 | 484 | 622 | 798 | 904 |
| Ford | 492 | 528 | 655 | 835 | 1009 |
| Graham | 404 | 525 | 622 | 917 | 920 |
| Gray | 404 | 508 | 622 | 833 | 836 |
| Greenwood | 404 | 489 | 622 | 868 | 1011 |
| Harper | 404 | 471 | 622 | 917 | 1094 |
| Hodgeman | 404 | 460 | 622 | 775 | 904 |
| Kearny | 404 | 462 | 622 | 895 | 904 |
| Kiowa | 404 | 525 | 622 | 917 | 920 |
| Lane | 436 | 499 | 671 | 836 | 976 |
| Logan | 404 | 460 | 622 | 775 | 831 |
| McPherson | 428 | 486 | 658 | 820 | 879 |
| Marshall | 482 | 485 | 622 | 829 | 1024 |
| Mitchell | 404 | 525 | 622 | 917 | 944 |
| Morris | 404 | 502 | 622 | 780 | 904 |
| Nemaha | 404 | 485 | 622 | 917 | 920 |
| Ness | 404 | 525 | 622 | 775 | 970 |
| Osborne | 404 | 525 | 622 | 908 | 911 |
| Pawnee | 419 | 477 | 645 | 803 | 862 |
| Pratt | 420 | 477 | 646 | 805 | 863 |
| Reno | 439 | 494 | 668 | 939 | 1000 |
| Rice | 404 | 473 | 622 | 842 | 951 |
| Rush | 404 | 525 | 622 | 839 | 904 |
| Saline | 518 | 529 | 675 | 873 | 1031 |
| Seward | 471 | 594 | 725 | 914 | 1075 |
| Sherman | 404 | 462 | 622 | 829 | 1102 |
| Stafford | 404 | 473 | 622 | 775 | 831 |
| Stevens | 517 | 588 | 796 | 991 | 1158 |
| Trego | 425 | 483 | 654 | 964 | 967 |
| Washington | 457 | 460 | 622 | 775 | 831 |
| Wilson | 404 | 460 | 622 | 844 | 1102 |

KENTUCKY

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Bowling Green, KY MSA | 485 | 501 | 661 | 840 | 1015 | Edmonson, Warren |
| Cincinnati-Middleton, OH-KY-IN HMFA | 442 | 554 | 735 | 1018 | 1121 | Boone, Bracken, Campbell, Gallatin, Kenton, Pendleton |
| Clarksville, TN-KY HMFA | 516 | 588 | 767 | 1016 | 1102 | Christian, Trigg |
| Elizabethtown, KY MSA | 441 | 443 | 585 | 862 | 1036 | Hardin, Larue |
| Evansville, IN-KY HMFA | 533 | 572 | 739 | 941 | 1028 | Henderson, Webster |
| Grant County, KY HMFA | 413 | 507 | 686 | 854 | 917 | Grant |

SCHEDULE B - FY 2014 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 16

KENTUCKY continued

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Huntington-Ashland, WV-KY-OH MSA | 383 | 523 | 643 | 849 | 1043 | Boyd, Greenup |
| Lexington-Fayette, KY MSA | 469 | 548 | 717 | 1021 | 1143 | Bourbon, Clark, Fayette, Jessamine, Scott, Woodford |
| Louisville, KY-IN HMFA | 485 | 567 | 705 | 976 | 1104 | Bullitt, Henry, Jefferson, Oldham, Spencer, Trimble |
| Meade County, KY HMFA | 437 | 470 | 636 | 902 | 905 | Meade |
| Nelson County, KY HMFA | 421 | 485 | 612 | 902 | 918 | Nelson |
| Owensboro, KY MSA | 446 | 463 | 626 | 810 | 891 | Daviess, Hancock, McLean |
| Shelby County, KY HMFA | 507 | 510 | 690 | 927 | 1089 | Shelby |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Adair | 415 | 418 | 565 | 833 | 835 | Allen | 425 | 477 | 565 | 833 | 835 |
| Anderson | 531 | 534 | 671 | 836 | 972 | Ballard | 415 | 418 | 565 | 775 | 924 |
| Barren | 415 | 418 | 565 | 792 | 893 | Bath | 425 | 475 | 565 | 833 | 835 |
| Bell | 348 | 453 | 565 | 793 | 796 | Boyle | 470 | 473 | 640 | 889 | 1134 |
| Breathitt | 425 | 477 | 565 | 704 | 785 | Breckinridge | 425 | 460 | 565 | 833 | 835 |
| Butler | 425 | 477 | 565 | 833 | 1001 | Caldwell | 425 | 476 | 565 | 797 | 800 |
| Calloway | 471 | 529 | 636 | 908 | 911 | Carlisle | 456 | 512 | 607 | 756 | 811 |
| Carroll | 485 | 545 | 646 | 952 | 1090 | Carter | 425 | 477 | 565 | 790 | 1001 |
| Casey | 415 | 418 | 565 | 769 | 792 | Clay | 425 | 477 | 565 | 833 | 1001 |
| Clinton | 373 | 448 | 565 | 796 | 1001 | Crittenden | 425 | 477 | 565 | 808 | 811 |
| Cumberland | 425 | 455 | 565 | 833 | 835 | Elliott | 425 | 448 | 565 | 704 | 792 |
| Estill | 425 | 442 | 565 | 704 | 958 | Fleming | 425 | 477 | 565 | 833 | 835 |
| Floyd | 425 | 471 | 565 | 712 | 1001 | Franklin | 409 | 543 | 665 | 980 | 983 |
| Fulton | 425 | 477 | 565 | 833 | 835 | Garrard | 430 | 482 | 572 | 799 | 802 |
| Graves | 432 | 435 | 576 | 717 | 846 | Grayson | 425 | 433 | 565 | 795 | 865 |
| Green | 425 | 477 | 565 | 775 | 778 | Harlan | 456 | 477 | 565 | 769 | 842 |
| Harrison | 356 | 443 | 599 | 746 | 904 | Hart | 415 | 418 | 565 | 704 | 755 |
| Hickman | 425 | 448 | 565 | 704 | 755 | Hopkins | 445 | 448 | 565 | 833 | 968 |
| Jackson | 475 | 533 | 632 | 808 | 886 | Johnson | 415 | 418 | 565 | 732 | 755 |
| Knott | 415 | 418 | 565 | 804 | 807 | Knox | 415 | 418 | 565 | 814 | 817 |
| Laurel | 439 | 493 | 584 | 772 | 1034 | Lawrence | 425 | 435 | 565 | 729 | 974 |
| Lee | 425 | 477 | 565 | 830 | 833 | Leslie | 423 | 426 | 576 | 717 | 770 |
| Letcher | 425 | 461 | 565 | 704 | 755 | Lewis | 415 | 418 | 565 | 745 | 755 |
| Lincoln | 415 | 418 | 565 | 734 | 767 | Livingston | 425 | 477 | 565 | 833 | 835 |
| Logan | 452 | 460 | 611 | 761 | 817 | Lyon | 415 | 418 | 565 | 704 | 792 |
| McCracken | 480 | 483 | 615 | 766 | 822 | McCreary | 425 | 477 | 565 | 777 | 792 |
| Madison | 461 | 464 | 604 | 856 | 1070 | Magoffin | 415 | 418 | 565 | 704 | 792 |
| Marion | 434 | 437 | 591 | 736 | 790 | Marshall | 427 | 460 | 623 | 799 | 833 |
| Martin | 425 | 477 | 565 | 815 | 1001 | Mason | 423 | 426 | 576 | 812 | 815 |
| Menifee | 425 | 477 | 565 | 723 | 792 | Mercer | 448 | 453 | 596 | 808 | 952 |
| Metcalfe | 443 | 446 | 604 | 752 | 847 | Monroe | 418 | 421 | 565 | 704 | 755 |
| Montgomery | 435 | 488 | 579 | 841 | 1025 | Morgan | 445 | 448 | 565 | 833 | 849 |
| Muhlenberg | 370 | 436 | 565 | 704 | 1001 | Nicholas | 415 | 418 | 565 | 811 | 1001 |
| Ohio | 421 | 424 | 565 | 800 | 1001 | Owen | 446 | 449 | 608 | 788 | 1077 |

SCHEDULE B - FY 2014 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 17

KENTUCKY continued

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Owsley | 425 | 448 | 565 | 740 | 792 |
| Pike | 521 | 525 | 710 | 914 | 949 |
| Pulaski | 444 | 447 | 576 | 799 | 900 |
| Rockcastle | 425 | 431 | 565 | 805 | 846 |
| Russell | 346 | 418 | 565 | 748 | 944 |
| Taylor | 371 | 448 | 606 | 755 | 810 |
| Union | 450 | 462 | 565 | 780 | 792 |
| Wayne | 425 | 439 | 565 | 704 | 792 |
| Wolfe | 476 | 481 | 633 | 933 | 1121 |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Perry | 425 | 477 | 565 | 704 | 755 |
| Powell | 415 | 418 | 565 | 808 | 819 |
| Robertson | 547 | 551 | 745 | 928 | 1044 |
| Rowan | 364 | 468 | 574 | 715 | 900 |
| Simpson | 469 | 472 | 625 | 778 | 876 |
| Todd | 439 | 491 | 584 | 845 | 848 |
| Washington | 425 | 477 | 565 | 766 | 769 |
| Whitley | 438 | 441 | 597 | 806 | 1027 |

LOUISIANA

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Alexandria, LA MSA | 530 | 539 | 656 | 889 | 1020 | Grant, Rapides |
| Baton Rouge, LA HMFA | 550 | 670 | 799 | 995 | 1147 | Ascension, East Baton Rouge, East Feliciana, Livingston, Pointe Coupee, St. Helena, West Baton Rouge, West Feliciana |
| Houma-Bayou Cane-Thibodaux, LA MSA | 496 | 571 | 773 | 1000 | 1369 | Lafourche, Terrebonne |
| Iberville Parish, LA HMFA | 438 | 471 | 637 | 861 | 1006 | Iberville |
| Lafayette, LA MSA | 501 | 667 | 791 | 1038 | 1283 | Lafayette, St. Martin |
| Lake Charles, LA MSA | 549 | 578 | 729 | 972 | 1190 | Calcasieu, Cameron |
| Monroe, LA MSA | 522 | 525 | 693 | 863 | 926 | Ouachita, Union |
| New Orleans-Metairie-Kenner, LA MSA | 646 | 765 | 948 | 1190 | 1440 | Jefferson, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist, St. Tammany |
| Shreveport-Bossier City, LA MSA | 543 | 609 | 757 | 943 | 1032 | Bossier, Caddo, De Soto |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Acadia | 492 | 495 | 637 | 856 | 859 |
| Assumption | 516 | 553 | 656 | 967 | 1002 |
| Beauregard | 543 | 557 | 672 | 897 | 1190 |
| Caldwell | 501 | 537 | 637 | 939 | 1067 |
| Claiborne | 501 | 537 | 637 | 939 | 1128 |
| East Carroll | 497 | 501 | 637 | 793 | 1126 |
| Franklin | 468 | 471 | 637 | 828 | 851 |
| Jackson | 489 | 508 | 637 | 939 | 1035 |
| La Salle | 476 | 480 | 637 | 878 | 960 |
| Madison | 484 | 487 | 659 | 843 | 881 |
| Natchitoches | 587 | 613 | 727 | 967 | 983 |
| Richland | 468 | 471 | 637 | 868 | 898 |
| St. James | 501 | 537 | 637 | 939 | 1017 |
| St. Mary | 518 | 522 | 696 | 977 | 1045 |
| Tensas | 468 | 471 | 637 | 793 | 851 |
| Vernon | 546 | 676 | 915 | 1140 | 1223 |
| Webster | 501 | 515 | 637 | 835 | 851 |
| Winn | 501 | 537 | 637 | 856 | 859 |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Allen | 501 | 534 | 637 | 901 | 904 |
| Avoyelles | 451 | 492 | 665 | 956 | 1155 |
| Bienville | 501 | 537 | 637 | 939 | 960 |
| Catahoula | 501 | 532 | 637 | 939 | 1026 |
| Concordia | 468 | 471 | 637 | 939 | 942 |
| Evangeline | 468 | 471 | 637 | 843 | 866 |
| Iberia | 519 | 523 | 707 | 881 | 945 |
| Jefferson Davis | 501 | 537 | 637 | 903 | 906 |
| Lincoln | 613 | 617 | 759 | 1053 | 1344 |
| Morehouse | 514 | 517 | 691 | 861 | 1130 |
| Red River | 501 | 537 | 637 | 939 | 960 |
| Sabine | 515 | 522 | 637 | 793 | 1128 |
| St. Landry | 428 | 471 | 637 | 798 | 851 |
| Tangipahoa | 540 | 693 | 822 | 1038 | 1217 |
| Vermilion | 516 | 554 | 657 | 959 | 1123 |
| Washington | 482 | 486 | 657 | 818 | 1041 |
| West Carroll | 468 | 471 | 637 | 912 | 950 |

SCHEDULE B - FY 2014 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 18

MAINE

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Components of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Bangor, ME HMFA | 590 | 682 | 861 | 1072 | 1245 | Penobscot County towns of Bangor city, Brewer city, Eddington town, Glenburn town, Hampden town, Hermon town, Holden town, Kenduskeag town, Milford town, Old Town city, Orono town, Orrington town, Penobscot Indian Island Reservation, Veazie town |
| Cumberland County, ME (part) HMFA | 525 | 661 | 876 | 1253 | 1493 | Cumberland County towns of Baldwin town, Bridgton town, Brunswick town, Harpswell town, Harrison town, Naples town, New Gloucester town, Pownal town, Sebago town |
| Lewiston-Auburn, ME MSA | 486 | 575 | 752 | 948 | 1006 | Androscoggin County towns of Auburn city, Durham town, Greene town, Leeds town, Lewiston city, Lisbon town, Livermore town, Livermore Falls town, Mechanic Falls town, Minot town, Poland town, Sabattus town, Turner town, Wales town |
| Penobscot County, ME (part) HMFA | 458 | 574 | 680 | 952 | 1100 | Penobscot County towns of Alton town, Argyle UT, Bradford town, Bradley town, Burlington town, Carmel town, Carroll plantation, Charleston town, Chester town, Clifton town, Corinna town, Corinth town, Dexter town, Dixmont town, Drew plantation, East Central Penobscot UT, East Millinocket town, Edinburg town, Enfield town, Etna town, Exeter town, Garland town, Greenbush town, Howland town, Hudson town, Kingman UT, Lagrange town, Lakeville town, Lee town, Levant town, Lincoln town, Lowell town, Mattawamkeag town, Maxfield town, Medway town, Millinocket town, Mount Chase town, Newburgh town, Newport town, North Penobscot UT, Passadumkeag town, Patten town, Plymouth town, Prentiss UT, Seboeis plantation, Springfield town, Stacyville town, Stetson town, Twombly UT, Webster plantation, Whitney UT, Winn town, Woodville town |
| Portland, ME HMFA | 688 | 819 | 1012 | 1339 | 1406 | Cumberland County towns of Chebeague Island town<br>Cumberland County towns of Cape Elizabeth town, Casco town, Cumberland town, Falmouth town, Freeport town, Frye Island town, Gorham town, Gray town, Long Island town, North Yarmouth town, Portland city, Raymond town, Scarborough town, South Portland city, Standish town, Westbrook city, Windham town, Yarmouth town<br>York County towns of Buxton town, Hollis town, Limington town, Old Orchard Beach town |
| Sagadahoc County, ME HMFA | 685 | 727 | 862 | 1118 | 1407 | Sagadahoc County towns of Arrowsic town, Bath city, Bowdoin town, Bowdoinham town, Georgetown town, Perkins UT, Phippsburg town, Richmond town, Topsham town, West Bath town, Woolwich town |
| York County, ME (part) HMFA | 599 | 691 | 876 | 1189 | 1231 | York County towns of Acton town, Alfred town, Arundel town, Biddeford city, Cornish town, Dayton town, Kennebunk town, Kennebunkport town, Lebanon town, Limerick town, Lyman town, Newfield town, North Berwick town, Ogunquit town, Parsonsfield town, Saco city, Sanford town, Shapleigh town, Waterboro town, Wells town |
| York-Kittery-South Berwick, ME HMFA | 729 | 798 | 1050 | 1416 | 1422 | York County towns of Berwick town, Eliot town, Kittery town, South Berwick town, York town |

SCHEDULE B - FY 2014 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 19

MAINE continued

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Towns within nonmetropolitan counties |
|---|---|---|---|---|---|---|
| Aroostook County, ME | 515 | 530 | 637 | 807 | 884 | Allagash town, Amity town, Ashland town, Bancroft town, Blaine town, Bridgewater town, Caribou city, Cary plantation, Castle Hill town, Caswell town, Central Aroostook UT, Chapman town, Connor UT, Crystal town, Cyr plantation, Dyer Brook town, Eagle Lake town, Easton town, Fort Fairfield town, Fort Kent town, Frenchville town, Garfield plantation, Glenwood plantation, Grand Isle town, Hamlin town, Hammond town, Haynesville town, Hersey town, Hodgdon town, Houlton town, Island Falls town, Limestone town, Linneus town, Littleton town, Ludlow town, Macwahoc plantation, Madawaska town, Mapleton town, Mars Hill town, Masardis town, Merrill town, Monticello town, Moro plantation, Nashville plantation, New Canada town, New Limerick town, New Sweden town, Northwest Aroostook UT, Oakfield town, Orient town, Oxbow plantation, Penobscot Indian Island Reservation, Perham town, Portage Lake town, Presque Isle city, Reed plantation, St. Agatha town, St. Francis town, St. John plantation, Sherman town, Smyrna town, South Aroostook UT, Square Lake UT, Stockholm town, Van Buren town, Wade town, Wallagrass town, Washburn town, Westfield town, Westmanland town, Weston town, Winterville plantation, Woodland town |
| Franklin County, ME | 536 | 559 | 663 | 826 | 1174 | Avon town, Carrabassett Valley town, Carthage town, Chesterville town, Coplin plantation, Dallas plantation, East Central Franklin UT, Eustis town, Farmington town, Industry town, Jay town, Kingfield town, Madrid town, New Sharon town, New Vineyard town, North Franklin UT, Phillips town, Rangeley town, Rangeley plantation, Sandy River plantation, South Franklin UT, Strong town, Temple town, Weld town, West Central Franklin UT, Wilton town, Wyman UT |
| Hancock County, ME | 571 | 646 | 823 | 1083 | 1100 | Amherst town, Aurora town, Bar Harbor town, Blue Hill town, Brooklin town, Brooksville town, Bucksport town, Castine town, Central Hancock UT, Cranberry Isles town, Dedham town, Deer Isle town, Eastbrook town, East Hancock UT, Ellsworth city, Franklin town, Frenchboro town, Gouldsboro town, Great Pond town, Hancock town, Lamoine town, Mariaville town, Mount Desert town, Northwest Hancock UT, Orland town, Osborn town, Otis town, Penobscot town, Sedgwick town, Sorrento town, Southwest Harbor town, Stonington town, Sullivan town, Surry town, Swans Island town, Tremont town, Trenton town, Verona Island town, Waltham town, Winter Harbor town |
| Kennebec County, ME | 522 | 604 | 772 | 968 | 1032 | Albion town, Augusta city, Belgrade town, Benton town, Chelsea town, China town, Clinton town, Farmingdale town, Fayette town, Gardiner city, Hallowell city, Litchfield town, Manchester town, Monmouth town, Mount Vernon town, Oakland town, Pittston town, Randolph town, Readfield town, |

SCHEDULE B - FY 2014 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 20

MAINE continued

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Towns within nonmetropolitan counties |
|---|---|---|---|---|---|---|
| | | | | | | Rome town, Sidney town, Unity UT, Vassalboro town, Vienna town, Waterville city, Wayne town, West Gardiner town, Windsor town, Winslow town, Winthrop town |
| Knox County, ME | 713 | 717 | 884 | 1133 | 1181 | Appleton town, Camden town, Criehaven UT, Cushing town, Friendship town, Hope town, Isle au Haut town, Matinicus Isle plantation, North Haven town, Owls Head town, Rockland city, Rockport town, St. George town, South Thomaston town, Thomaston town, Union town, Vinalhaven town, Warren town, Washington town |
| Lincoln County, ME | 546 | 728 | 918 | 1143 | 1227 | Alna town, Boothbay town, Boothbay Harbor town, Bremen town, Bristol town, Damariscotta town, Dresden town, Edgecomb town, Hibberts gore, Jefferson town, Monhegan plantation, Newcastle town, Nobleboro town, Somerville town, South Bristol town, Southport town, Waldoboro town, Westport Island town, Whitefield town, Wiscasset town |
| Oxford County, ME | 521 | 554 | 697 | 940 | 1218 | Andover town, Bethel town, Brownfield town, Buckfield town, Byron town, Canton town, Denmark town, Dixfield town, Fryeburg town, Gilead town, Greenwood town, Hanover town, Hartford town, Hebron town, Hiram town, Lincoln plantation, Lovell town, Magalloway plantation, Mexico town, Milton UT, Newry town, North Oxford UT, Norway town, Otisfield town, Oxford town, Paris town, Peru town, Porter town, Roxbury town, Rumford town, South Oxford UT, Stoneham town, Stow town, Sumner town, Sweden town, Upton town, Waterford town, West Paris town, Woodstock town |
| Piscataquis County, ME | 486 | 548 | 650 | 843 | 891 | Abbot town, Atkinson town, Beaver Cove town, Blanchard UT, Bowerbank town, Brownville town, Dover-Foxcroft town, Greenville town, Guilford town, Kingsbury plantation, Lake View plantation, Medford town, Milo town, Monson town, Northeast Piscataquis UT, Northwest Piscataquis UT, Parkman town, Sangerville town, Sebec town, Shirley town, Southeast Piscataquis UT, Wellington town, Willimantic town |
| Somerset County, ME | 566 | 593 | 706 | 961 | 964 | Anson town, Athens town, Bingham town, Brighton plantation, Cambridge town, Canaan town, Caratunk town, Central Somerset UT, Cornville town, Dennistown plantation, Detroit town, Embden town, Fairfield town, Harmony town, Hartland town, Highland plantation, Jackman town, Madison town, Mercer town, Moose River town, Moscow town, New Portland town, Norridgewock town, Northeast Somerset UT, Northwest Somerset UT, Palmyra town, Pittsfield town, Pleasant Ridge plantation, Ripley town, St. Albans town, Seboomook Lake UT, Skowhegan town, Smithfield town, Solon town, Starks town, The Forks plantation, West Forks plantation |
| Waldo County, ME | 518 | 621 | 736 | 1002 | 1066 | Belfast city, Belmont town, Brooks town, Burnham town, Frankfort town, Freedom town, Islesboro town, Jackson town, Knox town, Liberty town, Lincolnville town, Monroe town, Montville town, Morrill town, Northport town, Palermo town, Prospect town, Searsmont town, Searsport town, |

SCHEDULE B - FY 2014 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 21

MAINE continued

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Towns within nonmetropolitan counties |
|---|---|---|---|---|---|---|
| Washington County, ME | 507 | 557 | 664 | 846 | 1026 | Stockton Springs town, Swanville town, Thorndike town, Troy town, Unity town, Waldo town, Winterport town Addison town, Alexander town, Baileyville town, Baring plantation, Beals town, Beddington town, Calais city, Centerville town, Charlotte town, Cherryfield town, Codyville plantation, Columbia town, Columbia Falls town, Cooper town, Crawford town, Cutler town, Danforth town, Deblois town, Dennysville town, East Central Washington UT, East Machias town, Eastport city, Grand Lake Stream plantation, Harrington town, Jonesboro town, Jonesport town, Lubec town, Machias town, Machiasport town, Marshfield town, Meddybemps town, Milbridge town, Northfield town, North Washington UT, Passamaquoddy Indian Township Reservation, Passamaquoddy Pleasant Point Reservation, Pembroke town, Perry town, Princeton town, Robbinston town, Roque Bluffs town, Steuben town, Talmadge town, Topsfield town, Vanceboro town, Waite town, Wesley town, Whiting town, Whitneyville town |

MARYLAND

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| *Baltimore-Towson, MD HMFA | 847 | 1001 | 1252 | 1599 | 1741 | Anne Arundel, Baltimore, Carroll, Harford, Howard, Queen Anne's, Baltimore city |
| Columbia city, MD HMFA | 1047 | 1307 | 1556 | 1994 | 2186 | Columbia city |
| Cumberland, MD-WV MSA | 454 | 537 | 637 | 867 | 988 | Allegany |
| Hagerstown, MD HMFA | 616 | 748 | 968 | 1340 | 1359 | Washington |
| *Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA | 799 | 942 | 1135 | 1414 | 1518 | Cecil |
| Salisbury, MD HMFA | 521 | 647 | 875 | 1126 | 1242 | Wicomico |
| Somerset County, MD HMFA | 414 | 587 | 696 | 875 | 962 | Somerset |
| Washington-Arlington-Alexandria, DC-VA-MD HMFA | 1176 | 1239 | 1469 | 1966 | 2470 | Calvert, Charles, Frederick, Montgomery, Prince George's |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Caroline | 654 | 659 | 891 | 1186 | 1332 |
| Garrett | 537 | 576 | 691 | 879 | 923 |
| St. Mary's | 819 | 1026 | 1216 | 1768 | 2147 |
| Worcester | 584 | 669 | 888 | 1106 | 1348 |
| Dorchester | 658 | 689 | 847 | 1055 | 1132 |
| Kent | 693 | 698 | 944 | 1241 | 1672 |
| Talbot | 808 | 814 | 1060 | 1320 | 1821 |

MASSACHUSETTS

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Components of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Barnstable Town, MA MSA | 787 | 877 | 1176 | 1538 | 1615 | Barnstable County towns of Barnstable Town city, Bourne town, Brewster town, Chatham town, Dennis town, Eastham town, Falmouth town, Harwich town, Mashpee town, Orleans town, Provincetown town, Sandwich town, Truro town, Wellfleet town, |

SCHEDULE B - FY 2014 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 22

MASSACHUSETTS continued

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Components of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| | | | | | | Yarmouth town |
| Berkshire County, MA (part) HMFA..... | 649 | 678 | 804 | 1019 | 1242 | Berkshire County towns of Alford town, Becket town, Clarksburg town, Egremont town, Florida town, Great Barrington town, Hancock town, Monterey town, Mount Washington town, New Ashford town, New Marlborough town, North Adams city, Otis town, Peru town, Sandisfield town, Savoy town, Sheffield town, Tyringham town, Washington town, West Stockbridge town, Williamstown town, Windsor town |
| Boston-Cambridge-Quincy, MA-NH HMFA..... | 1042 | 1164 | 1454 | 1811 | 1969 | Essex County towns of Amesbury Town city, Beverly city, Danvers town, Essex town, Gloucester city, Hamilton town, Ipswich town, Lynn city, Lynnfield town, Manchester-by-the-Sea town, Marblehead town, Middleton town, Nahant town, Newbury town, Newburyport city, Peabody city, Rockport town, Rowley town, Salem city, Salisbury town, Saugus town, Swampscott town, Topsfield town, Wenham town<br>Middlesex County towns of Acton town, Arlington town, Ashby town, Ashland town, Ayer town, Bedford town, Belmont town, Boxborough town, Burlington town, Cambridge city, Carlisle town, Concord town, Everett city, Framingham town, Holliston town, Hopkinton town, Hudson town, Lexington town, Lincoln town, Littleton town, Malden city, Marlborough city, Maynard town, Medford city, Melrose city, Natick town, Newton city, North Reading town, Reading town, Sherborn town, Shirley town, Somerville city, Stoneham town, Stow town, Sudbury town, Townsend town, Wakefield town, Waltham city, Watertown city, Wayland town, Weston town, Wilmington town, Winchester town, Woburn city<br>Norfolk County towns of Bellingham town, Braintree Town city, Brookline town, Canton town, Cohasset town, Dedham town, Dover town, Foxborough town, Franklin Town city, Holbrook town, Medfield town, Medway town, Millis town, Milton town, Needham town, Norfolk town, Norwood town, Plainville town, Quincy city, Randolph town, Sharon town, Stoughton town, Walpole town, Wellesley town, Westwood town, Weymouth Town city, Wrentham town<br>Plymouth County towns of Carver town, Duxbury town, Hanover town, Hingham town, Hull town, Kingston town, Marshfield town, Norwell town, Pembroke town, Plymouth town, Rockland town, Scituate town, Wareham town<br>Suffolk County towns of Boston city, Chelsea city, Revere city, Winthrop Town city |
| Brockton, MA HMFA..... | 876 | 882 | 1152 | 1470 | 1557 | Norfolk County towns of Avon town<br>Plymouth County towns of Abington town, Bridgewater town, Brockton city, East Bridgewater town, Halifax town, Hanson town, Lakeville town, Marion town, Mattapoisett town, Middleborough town, Plympton town, Rochester town, West Bridgewater town, Whitman town |
| Eastern Worcester County, MA HMFA..... | 720 | 818 | 1107 | 1379 | 1479 | Worcester County towns of Berlin town, Blackstone town, Bolton town, Harvard town, Hopedale town, Lancaster town, |

SCHEDULE B - FY 2014 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 23

MASSACHUSETTS continued

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Components of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| | | | | | | Mendon town, Milford town, Millville town, Southborough town, Upton town |
| Easton-Raynham, MA HMFA | 916 | 1010 | 1278 | 1822 | 1828 | Bristol County towns of Easton town, Raynham town |
| Fitchburg-Leominster, MA HMFA | 527 | 716 | 886 | 1103 | 1312 | Worcester County towns of Ashburnham town, Fitchburg city, Gardner city, Leominster city, Lunenburg town, Templeton town, Westminster town, Winchendon town |
| Franklin County, MA (part) HMFA | 697 | 752 | 952 | 1232 | 1501 | Franklin County towns of Ashfield town, Bernardston town, Buckland town, Charlemont town, Colrain town, Conway town, Deerfield town, Erving town, Gill town, Greenfield Town city, Hawley town, Heath town, Leverett town, Leyden town, Monroe town, Montague town, New Salem town, Northfield town, Orange town, Rowe town, Shelburne town, Shutesbury town, Warwick town, Wendell town, Whately town |
| Lawrence, MA-NH HMFA | 743 | 848 | 1088 | 1355 | 1454 | Essex County towns of Andover town, Boxford town, Georgetown town, Groveland town, Haverhill city, Lawrence city, Merrimac town, Methuen city, North Andover town, West Newbury town |
| Lowell, MA HMFA | 783 | 901 | 1157 | 1441 | 1697 | Middlesex County towns of Billerica town, Chelmsford town, Dracut town, Dunstable town, Groton town, Lowell city, Pepperell town, Tewksbury town, Tyngsborough town, Westford town |
| New Bedford, MA HMFA | 653 | 691 | 819 | 1020 | 1095 | Bristol County towns of Acushnet town, Dartmouth town, Fairhaven town, Freetown town, New Bedford city |
| Pittsfield, MA HMFA | 527 | 678 | 804 | 1001 | 1129 | Berkshire County towns of Adams town, Cheshire town, Dalton town, Hinsdale town, Lanesborough town, Lee town, Lenox town, Pittsfield city, Richmond town, Stockbridge town |
| Providence-Fall River, RI-MA HMFA | 663 | 748 | 913 | 1137 | 1361 | Bristol County towns of Attleboro city, Fall River city, North Attleborough town, Rehoboth town, Seekonk town, Somerset town, Swansea town, Westport town |
| Springfield, MA HMFA | 634 | 761 | 951 | 1187 | 1353 | Franklin County towns of Sunderland town<br>Hampden County towns of Agawam Town city, Blandford town, Brimfield town, Chester town, Chicopee city, East Longmeadow town, Granville town, Hampden town, Holland town, Holyoke city, Longmeadow town, Ludlow town, Monson town, Montgomery town, Palmer Town city, Russell town, Southwick town, Springfield city, Tolland town, Wales town, Westfield city, West Springfield Town city, Wilbraham town<br>Hampshire County towns of Amherst town, Belchertown town, Chesterfield town, Cummington town, Easthampton Town city, Goshen town, Granby town, Hadley town, Hatfield town, Huntington town, Middlefield town, Northampton city, Pelham town, Plainfield town, Southampton town, South Hadley town, Ware town, Westhampton town, Williamsburg town, Worthington town |
| Taunton-Mansfield-Norton, MA HMFA | 770 | 813 | 1057 | 1316 | 1413 | Bristol County towns of Berkley town, Dighton town, Mansfield town, Norton town, Taunton city |
| Western Worcester County, MA HMFA | 495 | 641 | 760 | 985 | 1346 | Worcester County towns of Athol town, Hardwick town, Hubbardston town, New Braintree town, Petersham town, Phillipston town, Royalston town, Warren town |
| Worcester, MA HMFA | 616 | 753 | 947 | 1179 | 1289 | Worcester County towns of Auburn town, Barre town, |

SCHEDULE B - FY 2014 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 24

MASSACHUSETTS continued

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Components of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| | | | | | | Boylston town, Brookfield town, Charlton town, Clinton town, Douglas town, Dudley town, East Brookfield town, Grafton town, Holden town, Leicester town, Millbury town, Northborough town, Northbridge town, North Brookfield town, Oakham town, Oxford town, Paxton town, Princeton town, Rutland town, Shrewsbury town, Southbridge Town city, Spencer town, Sterling town, Sturbridge town, Sutton town, Uxbridge town, Webster town, Westborough town, West Boylston town, West Brookfield town, Worcester city |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Towns within nonmetropolitan counties |
|---|---|---|---|---|---|---|
| Dukes County, MA | 776 | 964 | 1304 | 1694 | 1743 | Aquinnah town, Chilmark town, Edgartown town, Gosnold town, Oak Bluffs town, Tisbury town, West Tisbury town |
| Nantucket County, MA | 1070 | 1330 | 1799 | 2525 | 2534 | Nantucket town |

MICHIGAN

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Ann Arbor, MI MSA | 666 | 803 | 952 | 1301 | 1686 | Washtenaw |
| Barry County, MI HMFA | 479 | 503 | 680 | 891 | 950 | Barry |
| Battle Creek, MI MSA | 418 | 547 | 689 | 869 | 964 | Calhoun |
| Bay City, MI MSA | 391 | 514 | 658 | 877 | 1037 | Bay |
| Cass County, MI HMFA | 483 | 486 | 637 | 915 | 918 | Cass |
| Detroit-Warren-Livonia, MI HMFA | 508 | 646 | 843 | 1124 | 1228 | Lapeer, Macomb, Oakland, St. Clair, Wayne |
| Flint, MI MSA | 422 | 546 | 710 | 927 | 1046 | Genesee |
| Grand Rapids-Wyoming, MI HMFA | 521 | 590 | 740 | 1033 | 1162 | Kent |
| Holland-Grand Haven, MI MSA | 636 | 664 | 787 | 1087 | 1161 | Ottawa |
| Ionia County, MI HMFA | 509 | 512 | 676 | 911 | 984 | Ionia |
| Jackson, MI MSA | 512 | 594 | 772 | 1062 | 1066 | Jackson |
| Kalamazoo-Portage, MI MSA | 465 | 565 | 718 | 945 | 1150 | Kalamazoo, Van Buren |
| Lansing-East Lansing, MI MSA | 481 | 612 | 762 | 1013 | 1228 | Clinton, Eaton, Ingham |
| Livingston County, MI HMFA | 536 | 749 | 888 | 1286 | 1544 | Livingston |
| Monroe, MI MSA | 502 | 628 | 843 | 1086 | 1285 | Monroe |
| Muskegon-Norton Shores, MI MSA | 380 | 472 | 638 | 870 | 995 | Muskegon |
| Newaygo County, MI HMFA | 496 | 499 | 637 | 836 | 1031 | Newaygo |
| Niles-Benton Harbor, MI MSA | 468 | 532 | 694 | 933 | 1087 | Berrien |
| Saginaw-Saginaw Township North, MI MSA | 425 | 564 | 709 | 944 | 1088 | Saginaw |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Alcona | 444 | 471 | 637 | 848 | 1128 | Alger | 444 | 471 | 637 | 793 | 1023 |
| Allegan | 561 | 570 | 694 | 902 | 938 | Alpena | 407 | 516 | 637 | 939 | 1112 |
| Antrim | 386 | 489 | 648 | 880 | 1106 | Arenac | 480 | 521 | 637 | 911 | 1128 |
| Baraga | 444 | 471 | 637 | 793 | 878 | Benzie | 553 | 577 | 684 | 1008 | 1211 |
| Branch | 517 | 521 | 662 | 904 | 908 | Charlevoix | 555 | 568 | 687 | 856 | 1086 |
| Cheboygan | 444 | 526 | 637 | 939 | 942 | Chippewa | 449 | 488 | 644 | 802 | 861 |

SCHEDULE B - FY 2014 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 25

MICHIGAN continued

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Clare | 444 | 471 | 637 | 793 | 851 |
| Delta | 478 | 481 | 637 | 939 | 1026 |
| Emmet | 556 | 568 | 769 | 983 | 1337 |
| Gogebic | 437 | 471 | 637 | 872 | 1004 |
| Gratiot | 444 | 471 | 637 | 815 | 1020 |
| Houghton | 468 | 478 | 647 | 806 | 923 |
| Iosco | 515 | 537 | 637 | 939 | 1128 |
| Isabella | 434 | 585 | 694 | 921 | 1127 |
| Keweenaw | 448 | 475 | 643 | 948 | 951 |
| Leelanau | 553 | 676 | 801 | 998 | 1070 |
| Luce | 444 | 492 | 637 | 905 | 920 |
| Manistee | 446 | 473 | 640 | 809 | 855 |
| Mason | 467 | 495 | 670 | 877 | 895 |
| Menominee | 444 | 484 | 637 | 844 | 985 |
| Missaukee | 444 | 537 | 637 | 899 | 902 |
| Montmorency | 444 | 492 | 666 | 928 | 1180 |
| Ogemaw | 445 | 490 | 638 | 795 | 853 |
| Osceola | 444 | 471 | 637 | 903 | 960 |
| Otsego | 462 | 490 | 663 | 933 | 1004 |
| Roscommon | 444 | 490 | 637 | 840 | 1009 |
| Sanilac | 444 | 471 | 637 | 831 | 929 |
| Shiawassee | 402 | 499 | 675 | 848 | 902 |
| Wexford | 386 | 501 | 649 | 889 | 892 |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Crawford | 480 | 509 | 688 | 871 | 1219 |
| Dickinson | 444 | 476 | 637 | 793 | 1128 |
| Gladwin | 444 | 537 | 637 | 939 | 1128 |
| Grand Traverse | 584 | 614 | 815 | 1092 | 1096 |
| Hillsdale | 404 | 506 | 661 | 907 | 911 |
| Huron | 444 | 527 | 637 | 927 | 995 |
| Iron | 462 | 471 | 637 | 813 | 851 |
| Kalkaska | 500 | 530 | 717 | 991 | 994 |
| Lake | 444 | 471 | 637 | 876 | 1124 |
| Lenawee | 565 | 570 | 699 | 871 | 969 |
| Mackinac | 455 | 551 | 653 | 825 | 935 |
| Marquette | 479 | 544 | 695 | 866 | 929 |
| Mecosta | 463 | 537 | 637 | 886 | 894 |
| Midland | 570 | 573 | 744 | 1096 | 1206 |
| Montcalm | 486 | 516 | 651 | 922 | 1045 |
| Oceana | 489 | 493 | 647 | 820 | 1053 |
| Ontonagon | 497 | 500 | 637 | 843 | 912 |
| Oscoda | 478 | 506 | 685 | 853 | 915 |
| Presque Isle | 444 | 490 | 637 | 899 | 1128 |
| St. Joseph | 465 | 530 | 657 | 869 | 938 |
| Schoolcraft | 444 | 471 | 637 | 793 | 1128 |
| Tuscola | 381 | 509 | 637 | 881 | 1045 |

MINNESOTA

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Duluth, MN-WI MSA | 438 | 527 | 692 | 902 | 1005 | Carlton, St. Louis |
| Fargo, ND-MN MSA | 437 | 529 | 684 | 1008 | 1192 | Clay |
| Grand Forks, ND-MN MSA | 444 | 541 | 725 | 981 | 1183 | Polk |
| La Crosse, WI-MN MSA | 416 | 520 | 699 | 972 | 1183 | Houston |
| Mankato-North Mankato, MN MSA | 492 | 563 | 704 | 966 | 1247 | Blue Earth, Nicollet |
| Minneapolis-St. Paul-Bloomington, MN-WI MSA | 608 | 756 | 946 | 1332 | 1573 | Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Washington, Wright |
| Rochester, MN HMFA | 590 | 641 | 863 | 1156 | 1528 | Dodge, Olmsted |
| St. Cloud, MN MSA | 607 | 628 | 752 | 993 | 1332 | Benton, Stearns |
| Wabasha County, MN HMFA | 508 | 511 | 637 | 939 | 997 | Wabasha |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Aitkin | 514 | 595 | 706 | 1040 | 1250 |
| Beltrami | 435 | 513 | 674 | 930 | 962 |
| Brown | 424 | 537 | 637 | 793 | 851 |
| Chippewa | 430 | 545 | 646 | 952 | 955 |
| Cook | 557 | 591 | 792 | 1013 | 1153 |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Becker | 424 | 512 | 637 | 841 | 851 |
| Big Stone | 424 | 536 | 637 | 793 | 851 |
| Cass | 508 | 544 | 715 | 890 | 1266 |
| Clearwater | 424 | 471 | 637 | 795 | 1119 |
| Cottonwood | 424 | 471 | 637 | 939 | 942 |

SCHEDULE B - FY 2014 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 26

MINNESOTA continued

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Crow Wing | 430 | 533 | 721 | 1062 | 1066 |
| Faribault | 424 | 501 | 637 | 939 | 942 |
| Freeborn | 424 | 471 | 637 | 793 | 851 |
| Grant | 424 | 537 | 637 | 939 | 942 |
| Itasca | 444 | 552 | 747 | 930 | 998 |
| Kanabec | 512 | 569 | 770 | 1022 | 1029 |
| Kittson | 424 | 537 | 637 | 893 | 985 |
| Lac qui Parle | 424 | 471 | 637 | 793 | 976 |
| Lake of the Woods | 424 | 471 | 637 | 793 | 927 |
| Lincoln | 424 | 537 | 637 | 793 | 851 |
| McLeod | 508 | 511 | 671 | 924 | 988 |
| Marshall | 498 | 508 | 637 | 880 | 884 |
| Meeker | 447 | 620 | 751 | 935 | 1004 |
| Morrison | 487 | 490 | 638 | 822 | 853 |
| Murray | 424 | 537 | 637 | 793 | 1128 |
| Norman | 424 | 473 | 637 | 939 | 942 |
| Pennington | 379 | 471 | 637 | 793 | 1128 |
| Pipestone | 424 | 537 | 637 | 937 | 1032 |
| Red Lake | 424 | 494 | 637 | 909 | 927 |
| Renville | 424 | 533 | 637 | 793 | 871 |
| Rock | 468 | 471 | 637 | 793 | 853 |
| Sibley | 424 | 501 | 637 | 939 | 1005 |
| Stevens | 505 | 508 | 637 | 793 | 851 |
| Todd | 476 | 528 | 715 | 1033 | 1098 |
| Wadena | 424 | 535 | 637 | 839 | 1128 |
| Watonwan | 424 | 474 | 637 | 939 | 942 |
| Winona | 425 | 493 | 641 | 847 | 985 |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Douglas | 425 | 471 | 637 | 866 | 1070 |
| Fillmore | 515 | 535 | 637 | 915 | 982 |
| Goodhue | 483 | 551 | 745 | 1087 | 1297 |
| Hubbard | 415 | 471 | 637 | 928 | 1078 |
| Jackson | 424 | 494 | 637 | 909 | 1072 |
| Kandiyohi | 483 | 486 | 654 | 818 | 1050 |
| Koochiching | 424 | 471 | 637 | 793 | 927 |
| Lake | 407 | 477 | 646 | 918 | 941 |
| Le Sueur | 474 | 526 | 712 | 889 | 1167 |
| Lyon | 478 | 482 | 637 | 939 | 942 |
| Mahnomen | 424 | 471 | 637 | 793 | 929 |
| Martin | 396 | 492 | 665 | 828 | 1029 |
| Mille Lacs | 432 | 559 | 726 | 904 | 970 |
| Mower | 465 | 532 | 698 | 940 | 1141 |
| Nobles | 515 | 537 | 637 | 939 | 1045 |
| Otter Tail | 424 | 507 | 637 | 910 | 935 |
| Pine | 480 | 561 | 722 | 946 | 1090 |
| Pope | 465 | 516 | 698 | 869 | 933 |
| Redwood | 424 | 471 | 637 | 857 | 1128 |
| Rice | 505 | 628 | 849 | 1231 | 1237 |
| Roseau | 424 | 471 | 637 | 793 | 949 |
| Steele | 440 | 580 | 739 | 1019 | 1309 |
| Swift | 424 | 471 | 637 | 938 | 1128 |
| Traverse | 424 | 471 | 637 | 793 | 851 |
| Waseca | 429 | 477 | 645 | 950 | 1142 |
| Wilkin | 424 | 480 | 637 | 857 | 927 |
| Yellow Medicine | 424 | 479 | 637 | 937 | 1108 |

MISSISSIPPI

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Gulfport-Biloxi, MS MSA | 669 | 689 | 828 | 1065 | 1135 | Hancock, Harrison, Stone |
| Hattiesburg, MS MSA | 531 | 560 | 718 | 962 | 1012 | Forrest, Lamar, Perry |
| Jackson, MS HMFA | 459 | 639 | 771 | 960 | 1055 | Copiah, Hinds, Madison, Rankin |
| Marshall County, MS HMFA | 451 | 454 | 614 | 882 | 1087 | Marshall |
| Memphis, TN-MS-AR HMFA | 576 | 658 | 780 | 1066 | 1188 | DeSoto |
| Pascagoula, MS MSA | 648 | 652 | 818 | 1123 | 1132 | George, Jackson |
| Simpson County, MS HMFA | 365 | 518 | 614 | 770 | 821 | Simpson |
| Tate County, MS HMFA | 521 | 525 | 710 | 884 | 1228 | Tate |
| Tunica County, MS HMFA | 494 | 513 | 694 | 864 | 1057 | Tunica |

SCHEDULE B - FY 2014 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 27

MISSISSIPPI continued

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Adams | 418 | 518 | 614 | 805 | 1038 |
| Amite | 418 | 518 | 614 | 838 | 1011 |
| Benton | 418 | 518 | 614 | 790 | 821 |
| Calhoun | 365 | 462 | 614 | 867 | 1055 |
| Chickasaw | 380 | 454 | 614 | 765 | 821 |
| Claiborne | 418 | 518 | 614 | 812 | 821 |
| Clay | 448 | 486 | 658 | 820 | 879 |
| Covington | 418 | 505 | 614 | 905 | 1068 |
| Greene | 418 | 479 | 614 | 905 | 908 |
| Holmes | 418 | 518 | 614 | 765 | 821 |
| Issaquena | 661 | 798 | 970 | 1429 | 1434 |
| Jasper | 418 | 518 | 614 | 905 | 992 |
| Jefferson Davis | 418 | 468 | 614 | 905 | 908 |
| Kemper | 438 | 475 | 643 | 801 | 859 |
| Lauderdale | 418 | 518 | 614 | 877 | 1087 |
| Leake | 422 | 523 | 620 | 847 | 868 |
| Leflore | 496 | 508 | 614 | 765 | 832 |
| Lowndes | 435 | 558 | 662 | 926 | 929 |
| Monroe | 426 | 463 | 626 | 801 | 837 |
| Neshoba | 418 | 508 | 614 | 826 | 949 |
| Noxubee | 418 | 518 | 614 | 905 | 908 |
| Panola | 428 | 530 | 628 | 860 | 863 |
| Pike | 445 | 483 | 653 | 813 | 873 |
| Prentiss | 418 | 483 | 614 | 856 | 877 |
| Scott | 394 | 517 | 662 | 826 | 1077 |
| Smith | 477 | 518 | 701 | 873 | 1057 |
| Tallahatchie | 496 | 518 | 614 | 905 | 908 |
| Tishomingo | 418 | 462 | 614 | 894 | 932 |
| Walthall | 522 | 630 | 766 | 954 | 1024 |
| Washington | 488 | 491 | 616 | 862 | 865 |
| Webster | 496 | 518 | 614 | 905 | 1087 |
| Winston | 418 | 505 | 614 | 888 | 891 |
| Yazoo | 456 | 494 | 669 | 834 | 894 |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Alcorn | 418 | 518 | 614 | 833 | 920 |
| Attala | 418 | 518 | 614 | 905 | 908 |
| Bolivar | 457 | 460 | 622 | 775 | 831 |
| Carroll | 428 | 518 | 629 | 900 | 903 |
| Choctaw | 418 | 488 | 614 | 905 | 908 |
| Clarke | 418 | 518 | 614 | 905 | 908 |
| Coahoma | 381 | 540 | 640 | 797 | 855 |
| Franklin | 418 | 454 | 614 | 905 | 908 |
| Grenada | 418 | 513 | 614 | 774 | 821 |
| Humphreys | 418 | 454 | 614 | 894 | 897 |
| Itawamba | 418 | 518 | 614 | 905 | 908 |
| Jefferson | 418 | 454 | 614 | 830 | 833 |
| Jones | 488 | 692 | 821 | 1043 | 1097 |
| Lafayette | 556 | 642 | 816 | 1040 | 1091 |
| Lawrence | 457 | 566 | 671 | 837 | 1188 |
| Lee | 365 | 518 | 614 | 836 | 839 |
| Lincoln | 414 | 454 | 614 | 808 | 991 |
| Marion | 418 | 483 | 614 | 765 | 833 |
| Montgomery | 418 | 505 | 614 | 861 | 964 |
| Newton | 447 | 485 | 656 | 918 | 1162 |
| Oktibbeha | 572 | 600 | 716 | 1026 | 1229 |
| Pearl River | 461 | 500 | 677 | 991 | 994 |
| Pontotoc | 418 | 454 | 614 | 829 | 1046 |
| Quitman | 365 | 518 | 614 | 765 | 821 |
| Sharkey | 418 | 518 | 614 | 765 | 821 |
| Sunflower | 428 | 454 | 614 | 804 | 911 |
| Tippah | 418 | 518 | 614 | 816 | 912 |
| Union | 418 | 518 | 614 | 905 | 1087 |
| Warren | 533 | 536 | 683 | 851 | 940 |
| Wayne | 418 | 454 | 614 | 768 | 1087 |
| Wilkinson | 422 | 458 | 620 | 772 | 829 |
| Yalobusha | 418 | 518 | 614 | 905 | 1087 |

MISSOURI

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Bates County, MO HMFA | 405 | 477 | 646 | 869 | 872 | Bates |
| Calloway County, MO HMFA | 454 | 457 | 618 | 829 | 901 | Callaway |
| Cape Girardeau-Jackson, MO-IL MSA | 404 | 502 | 679 | 881 | 1074 | Bollinger, Cape Girardeau |
| Columbia, MO MSA | 523 | 536 | 691 | 1011 | 1222 | Boone, Howard |
| Dallas County, MO HMFA | 402 | 492 | 596 | 742 | 796 | Dallas |
| Jefferson City, MO HMFA | 380 | 472 | 639 | 890 | 919 | Cole, Osage |

SCHEDULE B - FY 2014 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 28

MISSOURI continued

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Joplin, MO MSA | 456 | 463 | 617 | 843 | 846 | Jasper, Newton |
| Kansas City, MO-KS HMFA | 534 | 687 | 852 | 1168 | 1300 | Caldwell, Cass, Clay, Clinton, Jackson, Lafayette, Platte, Ray |
| McDonald County, MO HMFA | 441 | 444 | 596 | 878 | 903 | McDonald |
| Moniteau County, MO HMFA | 389 | 483 | 654 | 836 | 954 | Moniteau |
| Polk County, MO HMFA | 405 | 441 | 596 | 850 | 1056 | Polk |
| Springfield, MO HMFA | 438 | 483 | 650 | 957 | 961 | Christian, Greene, Webster |
| St. Joseph, MO-KS MSA | 516 | 557 | 745 | 955 | 1176 | Andrew, Buchanan, DeKalb |
| St. Louis, MO-IL HMFA | 532 | 631 | 814 | 1061 | 1203 | Sullivan city part of Crawford, Franklin, Jefferson, Lincoln, St. Charles, St. Louis, Warren, St. Louis city |
| Washington County, MO HMFA | 481 | 503 | 596 | 832 | 881 | Washington |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Adair | 372 | 498 | 596 | 777 | 1056 | Atchison | 393 | 442 | 596 | 878 | 881 |
| Audrain | 434 | 486 | 657 | 897 | 1015 | Barry | 386 | 503 | 596 | 769 | 796 |
| Barton | 355 | 456 | 596 | 750 | 796 | Benton | 399 | 447 | 605 | 892 | 895 |
| Butler | 380 | 457 | 605 | 753 | 812 | Camden | 413 | 527 | 625 | 890 | 1107 |
| Carroll | 461 | 464 | 596 | 742 | 796 | Carter | 393 | 503 | 596 | 878 | 921 |
| Cedar | 393 | 441 | 596 | 837 | 921 | Chariton | 393 | 441 | 596 | 742 | 796 |
| Clark | 355 | 461 | 596 | 777 | 921 | Cooper | 393 | 456 | 596 | 878 | 952 |
| Crawford | 478 | 483 | 596 | 742 | 888 | Dade | 393 | 457 | 596 | 809 | 812 |
| Daviess | 393 | 447 | 596 | 878 | 921 | Dent | 393 | 448 | 596 | 843 | 846 |
| Douglas | 393 | 503 | 596 | 821 | 824 | Dunklin | 438 | 441 | 596 | 878 | 881 |
| Gasconade | 393 | 461 | 596 | 878 | 1023 | Gentry | 393 | 441 | 596 | 818 | 911 |
| Grundy | 390 | 498 | 596 | 878 | 984 | Harrison | 396 | 470 | 600 | 747 | 802 |
| Henry | 418 | 474 | 633 | 897 | 1102 | Hickory | 416 | 441 | 596 | 742 | 796 |
| Holt | 393 | 441 | 596 | 778 | 919 | Howell | 355 | 455 | 596 | 762 | 1056 |
| Iron | 393 | 503 | 596 | 794 | 1056 | Johnson | 490 | 508 | 674 | 993 | 1019 |
| Knox | 393 | 452 | 596 | 878 | 921 | Laclede | 393 | 503 | 596 | 822 | 954 |
| Lawrence | 452 | 455 | 596 | 847 | 1056 | Lewis | 438 | 441 | 596 | 772 | 921 |
| Linn | 438 | 441 | 596 | 801 | 804 | Livingston | 471 | 475 | 642 | 848 | 858 |
| Macon | 438 | 441 | 596 | 815 | 915 | Madison | 413 | 462 | 625 | 799 | 835 |
| Maries | 393 | 503 | 596 | 878 | 974 | Marion | 370 | 458 | 620 | 773 | 967 |
| Mercer | 393 | 441 | 596 | 820 | 921 | Miller | 432 | 488 | 610 | 769 | 815 |
| Mississippi | 377 | 441 | 596 | 766 | 796 | Monroe | 393 | 441 | 596 | 742 | 807 |
| Montgomery | 414 | 463 | 627 | 790 | 1111 | Morgan | 368 | 457 | 618 | 770 | 874 |
| New Madrid | 477 | 480 | 596 | 776 | 796 | Nodaway | 475 | 478 | 596 | 747 | 879 |
| Oregon | 393 | 503 | 596 | 796 | 960 | Ozark | 393 | 503 | 596 | 742 | 921 |
| Pemiscot | 393 | 468 | 596 | 767 | 796 | Perry | 401 | 449 | 607 | 854 | 989 |
| Pettis | 486 | 489 | 662 | 874 | 964 | Phelps | 377 | 469 | 634 | 861 | 989 |
| Pike | 393 | 441 | 596 | 867 | 870 | Pulaski | 440 | 615 | 740 | 1090 | 1311 |
| Putnam | 421 | 472 | 638 | 795 | 986 | Ralls | 393 | 503 | 596 | 878 | 1024 |
| Randolph | 374 | 469 | 628 | 782 | 1112 | Reynolds | 393 | 475 | 596 | 742 | 796 |

SCHEDULE B - FY 2014 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 29

MISSOURI continued

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Ripley | 393 | 441 | 596 | 878 | 905 | St. Clair | 393 | 489 | 596 | 742 | 796 |
| Ste. Genevieve | 443 | 446 | 603 | 849 | 932 | St. Francois | 483 | 486 | 658 | 888 | 974 |
| Saline | 393 | 441 | 596 | 809 | 915 | Schuyler | 406 | 441 | 596 | 878 | 1056 |
| Scotland | 393 | 441 | 596 | 759 | 921 | Scott | 366 | 455 | 616 | 775 | 848 |
| Shannon | 355 | 441 | 596 | 742 | 921 | Shelby | 393 | 441 | 596 | 808 | 811 |
| Stoddard | 393 | 446 | 596 | 802 | 805 | Stone | 396 | 492 | 665 | 828 | 889 |
| Sullivan | 461 | 464 | 628 | 883 | 970 | Taney | 502 | 532 | 660 | 822 | 1169 |
| Texas | 355 | 441 | 596 | 878 | 997 | Vernon | 390 | 462 | 625 | 826 | 835 |
| Wayne | 393 | 503 | 596 | 820 | 1056 | Worth | 393 | 441 | 596 | 764 | 921 |
| Wright | 393 | 441 | 596 | 752 | 1048 | | | | | | |

MONTANA

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Billings, MT MSA | 466 | 517 | 699 | 967 | 970 | Carbon, Yellowstone |
| Great Falls, MT MSA | 476 | 497 | 637 | 922 | 939 | Cascade |
| Missoula, MT MSA | 624 | 676 | 845 | 1212 | 1497 | Missoula |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Beaverhead | 468 | 471 | 637 | 939 | 1010 | Big Horn | 465 | 537 | 637 | 903 | 907 |
| Blaine | 465 | 471 | 637 | 793 | 851 | Broadwater | 479 | 485 | 656 | 817 | 1040 |
| Carter | 465 | 524 | 637 | 895 | 1010 | Chouteau | 465 | 537 | 637 | 939 | 952 |
| Custer | 450 | 534 | 637 | 929 | 932 | Daniels | 465 | 491 | 637 | 870 | 1010 |
| Dawson | 465 | 478 | 637 | 914 | 1128 | Deer Lodge | 465 | 537 | 637 | 939 | 1094 |
| Fallon | 465 | 524 | 637 | 939 | 1010 | Fergus | 465 | 517 | 637 | 833 | 1128 |
| Flathead | 508 | 595 | 736 | 1085 | 1304 | Gallatin | 551 | 596 | 747 | 1101 | 1323 |
| Garfield | 465 | 491 | 637 | 895 | 1010 | Glacier | 515 | 537 | 637 | 939 | 1012 |
| Golden Valley | 469 | 541 | 642 | 800 | 1018 | Granite | 467 | 473 | 640 | 797 | 1014 |
| Hill | 465 | 480 | 637 | 939 | 942 | Jefferson | 538 | 545 | 737 | 918 | 985 |
| Judith Basin | 465 | 537 | 637 | 909 | 1010 | Lake | 379 | 537 | 637 | 821 | 1066 |
| Lewis and Clark | 514 | 518 | 699 | 944 | 1120 | Liberty | 465 | 491 | 637 | 895 | 1010 |
| Lincoln | 515 | 537 | 637 | 896 | 1128 | McCone | 465 | 491 | 637 | 939 | 1128 |
| Madison | 509 | 588 | 697 | 868 | 931 | Meagher | 465 | 471 | 637 | 793 | 1010 |
| Mineral | 465 | 529 | 637 | 881 | 884 | Musselshell | 465 | 471 | 637 | 885 | 1010 |
| Park | 446 | 554 | 749 | 933 | 1326 | Petroleum | 465 | 491 | 637 | 895 | 1010 |
| Phillips | 465 | 501 | 637 | 895 | 1010 | Pondera | 465 | 537 | 637 | 939 | 1128 |
| Powder River | 465 | 491 | 637 | 939 | 1010 | Powell | 465 | 537 | 637 | 793 | 1111 |
| Prairie | 465 | 537 | 637 | 895 | 1010 | Ravalli | 507 | 510 | 687 | 1012 | 1016 |
| Richland | 465 | 537 | 637 | 816 | 1128 | Roosevelt | 465 | 471 | 637 | 793 | 851 |
| Rosebud | 465 | 471 | 637 | 793 | 851 | Sanders | 381 | 474 | 637 | 810 | 912 |
| Sheridan | 465 | 537 | 637 | 939 | 1128 | Silver Bow | 468 | 471 | 637 | 793 | 932 |
| Stillwater | 429 | 471 | 637 | 899 | 1128 | Sweet Grass | 469 | 541 | 642 | 946 | 1137 |
| Teton | 465 | 496 | 637 | 883 | 1010 | Toole | 465 | 537 | 637 | 939 | 1128 |

SCHEDULE B - FY 2014 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 30

MONTANA continued

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Treasure | 465 | 491 | 637 | 888 | 1010 | Valley | 465 | 537 | 637 | 882 | 885 |
| Wheatland | 465 | 491 | 637 | 895 | 1010 | Wibaux | 465 | 491 | 637 | 895 | 1010 |

NEBRASKA

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Lincoln, NE HMFA | 416 | 530 | 700 | 973 | 1215 | Lancaster |
| Omaha-Council Bluffs, NE-IA HMFA | 470 | 629 | 790 | 1059 | 1177 | Cass, Douglas, Sarpy, Washington |
| Saunders County, NE HMFA | 436 | 542 | 733 | 913 | 980 | Saunders |
| Seward County, NE HMFA | 349 | 457 | 587 | 813 | 1040 | Seward |
| Sioux City, IA-NE-SD MSA | 414 | 541 | 696 | 914 | 1027 | Dakota, Dixon |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Adams | 431 | 434 | 587 | 731 | 784 | Antelope | 396 | 495 | 587 | 762 | 784 |
| Arthur | 398 | 442 | 590 | 869 | 872 | Banner | 396 | 440 | 587 | 740 | 802 |
| Blaine | 398 | 442 | 590 | 735 | 807 | Boone | 396 | 495 | 587 | 731 | 784 |
| Box Butte | 396 | 450 | 587 | 770 | 816 | Boyd | 396 | 495 | 587 | 865 | 868 |
| Brown | 396 | 434 | 587 | 731 | 865 | Buffalo | 400 | 478 | 647 | 873 | 1115 |
| Burt | 396 | 434 | 587 | 807 | 810 | Butler | 396 | 434 | 587 | 774 | 968 |
| Cedar | 396 | 434 | 587 | 731 | 1040 | Chase | 396 | 434 | 587 | 731 | 830 |
| Cherry | 424 | 465 | 629 | 783 | 860 | Cheyenne | 396 | 459 | 587 | 850 | 853 |
| Clay | 396 | 495 | 587 | 731 | 784 | Colfax | 396 | 495 | 587 | 731 | 816 |
| Cuming | 402 | 441 | 597 | 744 | 809 | Custer | 396 | 495 | 587 | 865 | 1040 |
| Dawes | 418 | 434 | 587 | 865 | 868 | Dawson | 405 | 444 | 601 | 749 | 803 |
| Deuel | 396 | 434 | 587 | 731 | 802 | Dodge | 389 | 495 | 654 | 859 | 874 |
| Dundy | 396 | 434 | 587 | 731 | 802 | Fillmore | 396 | 434 | 587 | 759 | 791 |
| Franklin | 396 | 440 | 587 | 863 | 1040 | Frontier | 442 | 485 | 656 | 817 | 877 |
| Furnas | 396 | 434 | 587 | 731 | 802 | Gage | 398 | 457 | 610 | 795 | 829 |
| Garden | 396 | 440 | 587 | 731 | 972 | Garfield | 396 | 440 | 587 | 731 | 784 |
| Gosper | 408 | 448 | 606 | 755 | 828 | Grant | 396 | 440 | 587 | 731 | 802 |
| Greeley | 396 | 440 | 587 | 865 | 916 | Hall | 393 | 493 | 637 | 795 | 851 |
| Hamilton | 396 | 434 | 587 | 746 | 891 | Harlan | 396 | 434 | 587 | 731 | 784 |
| Hayes | 398 | 442 | 590 | 735 | 788 | Hitchcock | 396 | 440 | 587 | 731 | 826 |
| Holt | 396 | 495 | 587 | 731 | 813 | Hooker | 398 | 442 | 590 | 756 | 807 |
| Howard | 396 | 434 | 587 | 743 | 784 | Jefferson | 396 | 445 | 587 | 731 | 958 |
| Johnson | 396 | 434 | 587 | 731 | 784 | Kearney | 396 | 495 | 587 | 795 | 798 |
| Keith | 396 | 495 | 587 | 796 | 972 | Keya Paha | 396 | 440 | 587 | 731 | 802 |
| Kimball | 410 | 450 | 609 | 758 | 814 | Knox | 396 | 495 | 587 | 865 | 1040 |
| Lincoln | 374 | 464 | 628 | 782 | 896 | Logan | 480 | 533 | 712 | 887 | 973 |
| Loup | 396 | 440 | 587 | 731 | 802 | McPherson | 398 | 442 | 590 | 735 | 807 |
| Madison | 402 | 447 | 597 | 770 | 957 | Merrick | 396 | 434 | 587 | 865 | 868 |
| Morrill | 396 | 434 | 587 | 744 | 863 | Nance | 396 | 495 | 587 | 731 | 795 |
| Nemaha | 396 | 466 | 587 | 731 | 1040 | Nuckolls | 396 | 495 | 587 | 865 | 868 |

SCHEDULE B - FY 2014 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 31

NEBRASKA continued

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Otoe | 402 | 456 | 597 | 880 | 1057 | Pawnee | 396 | 434 | 587 | 731 | 784 |
| Perkins | 396 | 440 | 587 | 731 | 921 | Phelps | 396 | 495 | 587 | 731 | 1040 |
| Pierce | 396 | 495 | 587 | 731 | 1036 | Platte | 474 | 495 | 587 | 731 | 896 |
| Polk | 396 | 434 | 587 | 731 | 784 | Red Willow | 396 | 463 | 587 | 731 | 925 |
| Richardson | 396 | 487 | 587 | 731 | 784 | Rock | 398 | 443 | 591 | 752 | 808 |
| Saline | 466 | 511 | 691 | 861 | 923 | Scotts Bluff | 445 | 473 | 630 | 785 | 924 |
| Sheridan | 396 | 495 | 587 | 793 | 796 | Sherman | 396 | 434 | 587 | 731 | 929 |
| Sioux | 398 | 498 | 590 | 795 | 807 | Stanton | 396 | 434 | 587 | 865 | 946 |
| Thayer | 396 | 434 | 587 | 731 | 784 | Thomas | 404 | 449 | 599 | 746 | 819 |
| Thurston | 396 | 434 | 587 | 731 | 784 | Valley | 396 | 434 | 587 | 731 | 802 |
| Wayne | 396 | 434 | 587 | 817 | 820 | Webster | 396 | 495 | 587 | 865 | 1040 |
| Wheeler | 396 | 440 | 587 | 865 | 868 | York | 404 | 453 | 600 | 747 | 802 |

NEVADA

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Carson City, NV MSA | 545 | 683 | 869 | 1239 | 1508 | Carson |
| *Las Vegas-Paradise, NV MSA | 675 | 843 | 1038 | 1530 | 1816 | Clark |
| Reno-Sparks, NV MSA | 549 | 697 | 921 | 1357 | 1631 | Storey, Washoe |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Churchill | 486 | 632 | 815 | 1015 | 1443 | Douglas | 586 | 788 | 974 | 1435 | 1725 |
| Elko | 524 | 650 | 880 | 1124 | 1432 | Esmeralda | 380 | 471 | 637 | 895 | 1022 |
| Eureka | 494 | 612 | 828 | 1031 | 1329 | Humboldt | 414 | 513 | 694 | 992 | 1114 |
| Lander | 449 | 635 | 753 | 982 | 1208 | Lincoln | 466 | 578 | 782 | 1017 | 1064 |
| Lyon | 473 | 662 | 785 | 1157 | 1390 | Mineral | 530 | 750 | 889 | 1107 | 1427 |
| Nye | 487 | 605 | 818 | 1098 | 1109 | Pershing | 380 | 537 | 637 | 939 | 1022 |
| White Pine | 453 | 641 | 760 | 1098 | 1102 | | | | | | |

NEW HAMPSHIRE

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Components of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Boston-Cambridge-Quincy, MA-NH HMFA | 1042 | 1164 | 1454 | 1811 | 1969 | Rockingham County towns of Seabrook town, South Hampton town |
| Hillsborough County, NH (part) HMFA | 710 | 753 | 907 | 1132 | 1297 | Hillsborough County towns of Antrim town, Bennington town, Deering town, Francestown town, Greenfield town, Hancock town, Hillsborough town, Lyndeborough town, New Boston town, Peterborough town, Sharon town, Temple town, Windsor town |
| Lawrence, MA-NH HMFA | 743 | 848 | 1088 | 1355 | 1454 | Rockingham County towns of Atkinson town, Chester town, Danville town, Derry town, Fremont town, Hampstead town, Kingston town, Newton town, Plaistow town, Raymond town, Salem town, Sandown town, Windham town |
| Manchester, NH HMFA | 626 | 829 | 1052 | 1310 | 1484 | Hillsborough County towns of Bedford town, Goffstown town, Manchester city, Weare town |

SCHEDULE B - FY 2014 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 32

NEW HAMPSHIRE continued

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Components of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Nashua, NH HMFA | 809 | 919 | 1199 | 1612 | 1871 | Hillsborough County towns of Amherst town, Brookline town, Greenville town, Hollis town, Hudson town, Litchfield town, Mason town, Merrimack town, Milford town, Mont Vernon town, Nashua city, New Ipswich town, Pelham town, Wilton town |
| Portsmouth-Rochester, NH HMFA | 718 | 838 | 1065 | 1459 | 1523 | Rockingham County towns of Brentwood town, East Kingston town, Epping town, Exeter town, Greenland town, Hampton town, Hampton Falls town, Kensington town, New Castle town, Newfields town, Newington town, Newmarket town, North Hampton town, Portsmouth city, Rye town, Stratham town<br>Strafford County towns of Barrington town, Dover city, Durham town, Farmington town, Lee town, Madbury town, Middleton town, Milton town, New Durham town, Rochester city, Rollinsford town, Somersworth city, Strafford town |
| Western Rockingham County, NH HMFA | 949 | 962 | 1302 | 1787 | 1794 | Rockingham County towns of Auburn town, Candia town, Deerfield town, Londonderry town, Northwood town, Nottingham town |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Towns within nonmetropolitan counties |
|---|---|---|---|---|---|---|
| Belknap County, NH | 694 | 699 | 946 | 1346 | 1351 | Alton town, Barnstead town, Belmont town, Center Harbor town, Gilford town, Gilmanton town, Laconia city, Meredith town, New Hampton town, Sanbornton town, Tilton town |
| Carroll County, NH | 703 | 782 | 1013 | 1410 | 1415 | Albany town, Bartlett town, Brookfield town, Chatham town, Conway town, Eaton town, Effingham town, Freedom town, Hale's location, Hart's Location town, Jackson town, Madison town, Moultonborough town, Ossipee town, Sandwich town, Tamworth town, Tuftonboro town, Wakefield town, Wolfeboro town |
| Cheshire County, NH | 614 | 737 | 972 | 1211 | 1583 | Alstead town, Chesterfield town, Dublin town, Fitzwilliam town, Gilsum town, Harrisville town, Hinsdale town, Jaffrey town, Keene city, Marlborough town, Marlow town, Nelson town, Richmond town, Rindge town, Roxbury town, Stoddard town, Sullivan town, Surry town, Swanzey town, Troy town, Walpole town, Westmoreland town, Winchester town |
| Coos County, NH | 531 | 554 | 657 | 877 | 1051 | Atkinson and Gilmanton Academy grant, Beans grant, Beans purchase, Berlin city, Cambridge township, Carroll town, Chandlers purchase, Clarksville town, Colebrook town, Columbia town, Crawfords purchase, Cutts grant, Dalton town, Dixs grant, Dixville township, Dummer town, Errol town, Ervings location, Gorham town, Greens grant, Hadleys purchase, Jefferson town, Kilkenny township, Lancaster town, Low and Burbanks grant, Martins location, Milan town, Millsfield township, Northumberland town, Odell township, Pinkhams grant, Pittsburg town, Randolph town, Sargents purchase, Second College grant, Shelburne town, Stark town, Stewartstown town, Stratford town, Success township, |

SCHEDULE B - FY 2014 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 33

NEW HAMPSHIRE continued

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Towns within nonmetropolitan counties |
|---|---|---|---|---|---|---|
| | | | | | | Thompson and Meserves purchase, Wentworth location, Whitefield town |
| Grafton County, NH | 789 | 808 | 1016 | 1275 | 1418 | Alexandria town, Ashland town, Bath town, Benton town, Bethlehem town, Bridgewater town, Bristol town, Campton town, Canaan town, Dorchester town, Easton town, Ellsworth town, Enfield town, Franconia town, Grafton town, Groton town, Hanover town, Haverhill town, Hebron town, Holderness town, Landaff town, Lebanon city, Lincoln town, Lisbon town, Littleton town, Livermore town, Lyman town, Lyme town, Monroe town, Orange town, Orford town, Piermont town, Plymouth town, Rumney town, Sugar Hill town, Thornton town, Warren town, Waterville Valley town, Wentworth town, Woodstock town |
| Merrimack County, NH | 640 | 801 | 1002 | 1321 | 1576 | Allenstown town, Andover town, Boscawen town, Bow town, Bradford town, Canterbury town, Chichester town, Concord city, Danbury town, Dunbarton town, Epsom town, Franklin city, Henniker town, Hill town, Hooksett town, Hopkinton town, Loudon town, Newbury town, New London town, Northfield town, Pembroke town, Pittsfield town, Salisbury town, Sutton town, Warner town, Webster town, Wilmot town |
| Sullivan County, NH | 660 | 752 | 917 | 1242 | 1263 | Acworth town, Charlestown town, Claremont city, Cornish town, Croydon town, Goshen town, Grantham town, Langdon town, Lempster town, Newport town, Plainfield town, Springfield town, Sunapee town, Unity town, Washington town |

NEW JERSEY

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Atlantic City-Hammonton, NJ MSA | 792 | 917 | 1139 | 1575 | 1830 | Atlantic |
| Bergen-Passaic, NJ HMFA | 1094 | 1182 | 1402 | 1816 | 2059 | Bergen, Passaic |
| Jersey City, NJ HMFA | 990 | 1089 | 1291 | 1643 | 1813 | Hudson |
| Middlesex-Somerset-Hunterdon, NJ HMFA | 928 | 1184 | 1458 | 1892 | 2482 | Hunterdon, Middlesex, Somerset |
| Monmouth-Ocean, NJ HMFA | 917 | 1083 | 1345 | 1865 | 2193 | Monmouth, Ocean |
| Newark, NJ HMFA | 1022 | 1059 | 1265 | 1632 | 1865 | Essex, Morris, Sussex, Union |
| Ocean City, NJ MSA | 610 | 761 | 1025 | 1451 | 1526 | Cape May |
| *Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA | 799 | 942 | 1135 | 1414 | 1518 | Burlington, Camden, Gloucester, Salem |
| Trenton-Ewing, NJ MSA | 900 | 1017 | 1225 | 1602 | 1852 | Mercer |
| Vineland-Millville-Bridgeton, NJ MSA | 753 | 870 | 1071 | 1375 | 1724 | Cumberland |
| Warren County, NJ HMFA | 716 | 960 | 1171 | 1530 | 1707 | Warren |

NEW MEXICO

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Albuquerque, NM MSA | 521 | 655 | 802 | 1161 | 1420 | Bernalillo, Sandoval, Torrance, Valencia |
| Farmington, NM MSA | 505 | 543 | 735 | 915 | 982 | San Juan |
| Las Cruces, NM MSA | 517 | 620 | 736 | 1053 | 1171 | Dona Ana |

SCHEDULE B - FY 2014 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 34

NEW MEXICO continued

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Santa Fe, NM MSA | 742 | 807 | 957 | 1283 | 1372 | Santa Fe |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Catron | 478 | 537 | 637 | 939 | 956 | Chaves | 434 | 477 | 645 | 910 | 1125 |
| Cibola | 484 | 487 | 637 | 879 | 1128 | Colfax | 498 | 501 | 678 | 844 | 906 |
| Curry | 494 | 497 | 669 | 978 | 1185 | De Baca | 505 | 568 | 673 | 992 | 1010 |
| Eddy | 540 | 554 | 737 | 947 | 985 | Grant | 478 | 537 | 637 | 939 | 1024 |
| Guadalupe | 478 | 495 | 637 | 939 | 956 | Harding | 478 | 495 | 637 | 844 | 956 |
| Hidalgo | 478 | 495 | 637 | 939 | 956 | Lea | 581 | 585 | 791 | 1005 | 1064 |
| Lincoln | 529 | 657 | 889 | 1107 | 1188 | Los Alamos | 655 | 842 | 1092 | 1427 | 1850 |
| Luna | 478 | 536 | 637 | 918 | 921 | McKinley | 491 | 537 | 637 | 793 | 851 |
| Mora | 502 | 564 | 669 | 881 | 1004 | Otero | 393 | 537 | 637 | 930 | 1128 |
| Quay | 496 | 500 | 676 | 869 | 903 | Rio Arriba | 440 | 547 | 740 | 922 | 989 |
| Roosevelt | 423 | 551 | 711 | 886 | 1259 | San Miguel | 392 | 542 | 659 | 870 | 902 |
| Sierra | 454 | 493 | 667 | 831 | 1001 | Socorro | 448 | 471 | 637 | 793 | 1128 |
| Taos | 627 | 754 | 902 | 1123 | 1205 | Union | 490 | 493 | 667 | 966 | 1001 |

NEW YORK

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Albany-Schenectady-Troy, NY MSA | 662 | 750 | 929 | 1157 | 1242 | Albany, Rensselaer, Saratoga, Schenectady, Schoharie |
| Binghamton, NY MSA | 512 | 542 | 692 | 987 | 1119 | Broome, Tioga |
| Buffalo-Niagara Falls, NY MSA | 537 | 570 | 710 | 908 | 1027 | Erie, Niagara |
| Elmira, NY MSA | 500 | 600 | 787 | 1009 | 1130 | Chemung |
| Glens Falls, NY MSA | 652 | 835 | 1015 | 1364 | 1557 | Warren, Washington |
| Ithaca, NY MSA | 769 | 943 | 1130 | 1565 | 1571 | Tompkins |
| Kingston, NY MSA | 659 | 819 | 1062 | 1392 | 1613 | Ulster |
| Nassau-Suffolk, NY HMFA | 1033 | 1309 | 1613 | 2097 | 2415 | Nassau, Suffolk |
| New York, NY HMFA | 1163 | 1215 | 1440 | 1852 | 2075 | Bronx, Kings, New York, Putnam, Queens, Richmond, Rockland |
| Poughkeepsie-Newburgh-Middletown, NY MSA | 886 | 1023 | 1258 | 1576 | 1681 | Dutchess, Orange |
| Rochester, NY MSA | 563 | 685 | 834 | 1051 | 1123 | Livingston, Monroe, Ontario, Orleans, Wayne |
| Syracuse, NY MSA | 561 | 626 | 801 | 1051 | 1153 | Madison, Onondaga, Oswego |
| Utica-Rome, NY MSA | 601 | 612 | 779 | 1032 | 1159 | Herkimer, Oneida |
| Westchester County, NY Statutory Exception Area | 967 | 1177 | 1449 | 1853 | 2152 | Westchester |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Allegany | 507 | 510 | 637 | 833 | 937 | Cattaraugus | 479 | 525 | 662 | 879 | 940 |
| Cayuga | 551 | 586 | 746 | 978 | 1168 | Chautauqua | 485 | 489 | 637 | 904 | 928 |
| Chenango | 505 | 508 | 637 | 903 | 933 | Clinton | 567 | 638 | 814 | 1092 | 1178 |
| Columbia | 717 | 721 | 896 | 1161 | 1490 | Cortland | 592 | 601 | 749 | 967 | 1001 |
| Delaware | 525 | 529 | 667 | 836 | 959 | Essex | 542 | 636 | 817 | 1018 | 1261 |
| Franklin | 553 | 556 | 716 | 1029 | 1139 | Fulton | 548 | 551 | 708 | 935 | 1071 |
| Genesee | 471 | 610 | 765 | 981 | 1082 | Greene | 582 | 659 | 781 | 1045 | 1154 |
| Hamilton | 495 | 548 | 650 | 810 | 935 | Jefferson | 676 | 779 | 1012 | 1287 | 1453 |

SCHEDULE B - FY 2014 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 35

NEW YORK continued

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Lewis | 506 | 548 | 665 | 980 | 1028 |
| Otsego | 628 | 680 | 844 | 1134 | 1205 |
| Schuyler | 489 | 535 | 643 | 927 | 1099 |
| Steuben | 468 | 553 | 677 | 876 | 986 |
| Wyoming | 445 | 500 | 677 | 883 | 905 |
| Montgomery | 583 | 587 | 740 | 922 | 1044 |
| St. Lawrence | 503 | 570 | 724 | 972 | 1052 |
| Seneca | 484 | 599 | 710 | 1013 | 1017 |
| Sullivan | 727 | 731 | 907 | 1180 | 1606 |
| Yates | 501 | 506 | 659 | 899 | 1167 |

NORTH CAROLINA

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Anson County, NC HMFA | 487 | 537 | 637 | 932 | 1128 | Anson |
| Asheville, NC HMFA | 428 | 606 | 719 | 922 | 1197 | Buncombe, Henderson, Madison |
| Burlington, NC MSA | 539 | 542 | 684 | 889 | 914 | Alamance |
| Charlotte-Gastonia-Rock Hill, NC-SC HMFA | 622 | 686 | 813 | 1096 | 1359 | Cabarrus, Gaston, Mecklenburg, Union |
| Durham-Chapel Hill, NC HMFA | 575 | 711 | 843 | 1087 | 1273 | Chatham, Durham, Orange |
| Fayetteville, NC HMFA | 634 | 638 | 816 | 1091 | 1374 | Cumberland |
| Goldsboro, NC MSA | 490 | 511 | 691 | 901 | 1101 | Wayne |
| Greene County, NC HMFA | 468 | 471 | 637 | 800 | 851 | Greene |
| Greensboro-High Point, NC HMFA | 522 | 598 | 709 | 964 | 1087 | Guilford, Randolph |
| Greenville, NC HMFA | 528 | 531 | 686 | 929 | 1215 | Pitt |
| Haywood County, NC HMFA | 516 | 519 | 669 | 928 | 1185 | Haywood |
| Hickory-Lenoir-Morganton, NC MSA | 515 | 537 | 637 | 833 | 1037 | Alexander, Burke, Caldwell, Catawba |
| Hoke County, NC HMFA | 515 | 518 | 663 | 922 | 1143 | Hoke |
| Jacksonville, NC MSA | 612 | 616 | 757 | 1065 | 1341 | Onslow |
| Pender County, NC HMFA | 484 | 487 | 659 | 971 | 1098 | Pender |
| Person County, NC HMFA | 461 | 499 | 675 | 841 | 968 | Person |
| Raleigh-Cary, NC MSA | 618 | 722 | 856 | 1108 | 1377 | Franklin, Johnston, Wake |
| Rockingham County, NC HMFA | 501 | 504 | 637 | 793 | 851 | Rockingham |
| Rocky Mount, NC MSA | 541 | 545 | 673 | 918 | 968 | Edgecombe, Nash |
| *Virginia Beach-Norfolk-Newport News, VA-NC MSA | 913 | 939 | 1130 | 1562 | 1966 | Currituck |
| Wilmington, NC HMFA | 617 | 661 | 818 | 1078 | 1230 | Brunswick, New Hanover |
| Winston-Salem, NC MSA | 545 | 566 | 693 | 1000 | 1055 | Davie, Forsyth, Stokes, Yadkin |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Alleghany | 515 | 537 | 637 | 912 | 915 |
| Avery | 516 | 520 | 703 | 1036 | 1039 |
| Bertie | 468 | 471 | 637 | 844 | 851 |
| Camden | 642 | 646 | 807 | 1005 | 1215 |
| Caswell | 468 | 471 | 637 | 911 | 987 |
| Chowan | 515 | 537 | 637 | 845 | 1128 |
| Cleveland | 508 | 511 | 644 | 893 | 935 |
| Craven | 470 | 584 | 790 | 1025 | 1379 |
| Davidson | 477 | 506 | 637 | 887 | 1004 |
| Gates | 507 | 510 | 637 | 847 | 1119 |
| Granville | 591 | 615 | 732 | 912 | 994 |
| Harnett | 520 | 524 | 709 | 943 | 1156 |
| Ashe | 444 | 486 | 637 | 793 | 851 |
| Beaufort | 493 | 496 | 637 | 939 | 1059 |
| Bladen | 468 | 471 | 637 | 793 | 851 |
| Carteret | 558 | 583 | 691 | 988 | 1224 |
| Cherokee | 468 | 471 | 637 | 842 | 1082 |
| Clay | 515 | 537 | 637 | 939 | 1128 |
| Columbus | 515 | 520 | 637 | 793 | 851 |
| Dare | 658 | 690 | 934 | 1310 | 1566 |
| Duplin | 503 | 506 | 637 | 793 | 931 |
| Graham | 468 | 471 | 637 | 939 | 1128 |
| Halifax | 464 | 527 | 637 | 830 | 1124 |
| Hertford | 515 | 537 | 637 | 793 | 1128 |

SCHEDULE B - FY 2014 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 36

NORTH CAROLINA continued

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Hyde | 635 | 639 | 799 | 995 | 1068 | Iredell | 625 | 653 | 774 | 1004 | 1368 |
| Jackson | 525 | 529 | 676 | 877 | 1100 | Jones | 553 | 577 | 684 | 896 | 914 |
| Lee | 591 | 617 | 731 | 910 | 977 | Lenoir | 387 | 498 | 650 | 810 | 889 |
| Lincoln | 515 | 537 | 637 | 868 | 871 | McDowell | 468 | 471 | 637 | 795 | 1042 |
| Macon | 523 | 527 | 713 | 888 | 953 | Martin | 515 | 537 | 637 | 793 | 851 |
| Mitchell | 468 | 471 | 637 | 819 | 959 | Montgomery | 500 | 503 | 637 | 835 | 956 |
| Moore | 517 | 532 | 640 | 938 | 1128 | Northampton | 474 | 477 | 637 | 850 | 1093 |
| Pamlico | 468 | 471 | 637 | 909 | 1114 | Pasquotank | 585 | 589 | 741 | 995 | 1168 |
| Perquimans | 600 | 627 | 743 | 1095 | 1316 | Polk | 483 | 486 | 642 | 800 | 1067 |
| Richmond | 515 | 537 | 637 | 844 | 851 | Robeson | 486 | 489 | 637 | 808 | 981 |
| Rowan | 511 | 514 | 665 | 885 | 1021 | Rutherford | 515 | 537 | 637 | 903 | 1061 |
| Sampson | 379 | 513 | 637 | 860 | 989 | Scotland | 471 | 475 | 642 | 821 | 858 |
| Stanly | 379 | 483 | 637 | 880 | 1112 | Surry | 515 | 537 | 637 | 939 | 1128 |
| Swain | 534 | 538 | 728 | 907 | 1098 | Transylvania | 491 | 495 | 647 | 862 | 865 |
| Tyrrell | 515 | 537 | 637 | 816 | 959 | Vance | 394 | 489 | 662 | 824 | 965 |
| Warren | 396 | 484 | 637 | 939 | 1128 | Washington | 507 | 510 | 637 | 913 | 1076 |
| Watauga | 480 | 627 | 807 | 1132 | 1317 | Wilkes | 478 | 537 | 637 | 793 | 1064 |
| Wilson | 514 | 594 | 803 | 1068 | 1073 | Yancey | 478 | 481 | 637 | 801 | 851 |

NORTH DAKOTA

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Bismarck, ND MSA | 497 | 563 | 704 | 998 | 1177 | Burleigh, Morton |
| Fargo, ND-MN MSA | 437 | 529 | 684 | 1008 | 1192 | Cass |
| Grand Forks, ND-MN MSA | 444 | 541 | 725 | 981 | 1183 | Grand Forks |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Adams | 506 | 510 | 637 | 939 | 942 | Barnes | 524 | 527 | 668 | 832 | 893 |
| Benson | 515 | 537 | 637 | 939 | 942 | Billings | 513 | 516 | 645 | 803 | 875 |
| Bottineau | 468 | 471 | 637 | 793 | 851 | Bowman | 515 | 537 | 637 | 939 | 942 |
| Burke | 491 | 494 | 637 | 824 | 851 | Cavalier | 468 | 471 | 637 | 887 | 1056 |
| Dickey | 515 | 537 | 637 | 851 | 864 | Divide | 506 | 510 | 637 | 887 | 891 |
| Dunn | 490 | 493 | 637 | 939 | 942 | Eddy | 515 | 537 | 637 | 939 | 942 |
| Emmons | 515 | 537 | 637 | 939 | 1063 | Foster | 495 | 498 | 637 | 937 | 1128 |
| Golden Valley | 515 | 537 | 637 | 887 | 891 | Grant | 468 | 471 | 637 | 887 | 891 |
| Griggs | 515 | 537 | 637 | 939 | 1128 | Hettinger | 515 | 537 | 637 | 939 | 942 |
| Kidder | 475 | 478 | 637 | 921 | 924 | LaMoure | 468 | 471 | 637 | 939 | 942 |
| Logan | 506 | 510 | 637 | 887 | 891 | McHenry | 497 | 500 | 637 | 836 | 992 |
| McIntosh | 572 | 576 | 779 | 970 | 1042 | McKenzie | 468 | 471 | 637 | 939 | 942 |
| McLean | 509 | 513 | 637 | 868 | 914 | Mercer | 515 | 537 | 637 | 939 | 942 |
| Mountrail | 863 | 902 | 1069 | 1331 | 1865 | Nelson | 515 | 537 | 637 | 887 | 891 |
| Oliver | 506 | 510 | 637 | 887 | 891 | Pembina | 515 | 537 | 637 | 793 | 851 |

SCHEDULE B - FY 2014 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 37

NORTH DAKOTA continued

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Pierce | 515 | 537 | 637 | 939 | 942 |
| Ransom | 508 | 511 | 686 | 1011 | 1014 |
| Richland | 468 | 471 | 637 | 933 | 1008 |
| Sargent | 468 | 471 | 637 | 919 | 1003 |
| Sioux | 506 | 510 | 637 | 878 | 881 |
| Stark | 599 | 626 | 742 | 1029 | 1033 |
| Stutsman | 503 | 507 | 667 | 831 | 1094 |
| Traill | 475 | 478 | 647 | 825 | 866 |
| Ward | 794 | 847 | 1116 | 1644 | 1712 |
| Williams | 792 | 864 | 1053 | 1311 | 1407 |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Ramsey | 510 | 514 | 654 | 898 | 901 |
| Renville | 468 | 471 | 637 | 939 | 942 |
| Rolette | 515 | 537 | 637 | 939 | 1026 |
| Sheridan | 515 | 524 | 637 | 887 | 891 |
| Slope | 513 | 516 | 645 | 899 | 902 |
| Steele | 511 | 514 | 637 | 844 | 864 |
| Towner | 468 | 471 | 637 | 887 | 1041 |
| Walsh | 515 | 537 | 637 | 861 | 964 |
| Wells | 515 | 537 | 637 | 939 | 1010 |

OHIO

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Akron, OH MSA | 477 | 554 | 750 | 965 | 1002 | Portage, Summit |
| Brown County, OH HMFA | 365 | 472 | 614 | 871 | 931 | Brown |
| Canton-Massillon, OH MSA | 406 | 509 | 662 | 870 | 934 | Carroll, Stark |
| Cincinnati-Middleton, OH-KY-IN HMFA | 442 | 554 | 735 | 1018 | 1121 | Butler, Clermont, Hamilton, Warren |
| Cleveland-Elyria-Mentor, OH MSA | 493 | 592 | 750 | 1005 | 1037 | Cuyahoga, Geauga, Lake, Lorain, Medina |
| Columbus, OH HMFA | 498 | 620 | 806 | 1039 | 1202 | Delaware, Fairfield, Franklin, Licking, Madison, Morrow, Pickaway |
| Dayton, OH HMFA | 483 | 543 | 712 | 953 | 1068 | Greene, Miami, Montgomery |
| Huntington-Ashland, WV-KY-OH MSA | 383 | 523 | 643 | 849 | 1043 | Lawrence |
| Lima, OH MSA | 486 | 489 | 655 | 816 | 888 | Allen |
| Mansfield, OH MSA | 459 | 462 | 614 | 902 | 905 | Richland |
| Parkersburg-Marietta-Vienna, WV-OH MSA | 436 | 470 | 614 | 824 | 907 | Washington |
| Preble County, OH HMFA | 391 | 486 | 658 | 877 | 880 | Preble |
| Sandusky, OH MSA | 474 | 645 | 796 | 1037 | 1064 | Erie |
| Springfield, OH MSA | 486 | 547 | 713 | 939 | 1030 | Clark |
| Steubenville-Weirton, OH-WV MSA | 432 | 499 | 614 | 823 | 943 | Jefferson |
| Toledo, OH MSA | 403 | 516 | 677 | 913 | 966 | Fulton, Lucas, Ottawa, Wood |
| Union County, OH HMFA | 495 | 599 | 800 | 996 | 1069 | Union |
| Wheeling, WV-OH MSA | 466 | 493 | 614 | 788 | 821 | Belmont |
| Youngstown-Warren-Boardman, OH HMFA | 454 | 515 | 637 | 840 | 888 | Mahoning, Trumbull |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Adams | 417 | 486 | 614 | 778 | 821 |
| Ashtabula | 407 | 475 | 618 | 837 | 841 |
| Auglaize | 389 | 475 | 642 | 882 | 1055 |
| Clinton | 439 | 479 | 648 | 846 | 1010 |
| Coshocton | 417 | 481 | 614 | 846 | 867 |
| Darke | 449 | 506 | 614 | 887 | 997 |
| Fayette | 515 | 518 | 701 | 873 | 1035 |
| Guernsey | 365 | 481 | 614 | 767 | 856 |
| Hardin | 402 | 479 | 614 | 848 | 1022 |
| Henry | 424 | 515 | 624 | 906 | 1105 |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Ashland | 381 | 503 | 641 | 907 | 948 |
| Athens | 566 | 591 | 701 | 882 | 937 |
| Champaign | 400 | 502 | 614 | 905 | 976 |
| Columbiana | 391 | 476 | 614 | 813 | 890 |
| Crawford | 383 | 461 | 624 | 880 | 883 |
| Defiance | 473 | 476 | 614 | 809 | 1045 |
| Gallia | 417 | 494 | 614 | 810 | 914 |
| Hancock | 384 | 491 | 629 | 919 | 949 |
| Harrison | 365 | 511 | 614 | 874 | 877 |
| Highland | 375 | 467 | 614 | 765 | 821 |

SCHEDULE B - FY 2014 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 38

OHIO continued

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Hocking | 417 | 480 | 614 | 815 | 821 | Holmes | 417 | 475 | 614 | 772 | 821 |
| Huron | 365 | 464 | 614 | 862 | 972 | Jackson | 496 | 513 | 614 | 810 | 821 |
| Knox | 511 | 515 | 645 | 900 | 966 | Logan | 463 | 466 | 631 | 837 | 966 |
| Marion | 480 | 545 | 700 | 928 | 1027 | Meigs | 417 | 463 | 614 | 798 | 932 |
| Mercer | 417 | 454 | 614 | 850 | 853 | Monroe | 417 | 518 | 614 | 765 | 821 |
| Morgan | 455 | 500 | 614 | 905 | 908 | Muskingum | 378 | 518 | 636 | 912 | 1002 |
| Noble | 478 | 481 | 614 | 845 | 901 | Paulding | 417 | 486 | 614 | 785 | 821 |
| Perry | 418 | 454 | 614 | 804 | 859 | Pike | 496 | 518 | 614 | 905 | 1068 |
| Putnam | 425 | 474 | 626 | 780 | 837 | Ross | 475 | 519 | 702 | 886 | 1137 |
| Sandusky | 417 | 504 | 614 | 811 | 1087 | Scioto | 419 | 518 | 614 | 765 | 903 |
| Seneca | 473 | 476 | 614 | 855 | 863 | Shelby | 409 | 486 | 657 | 818 | 878 |
| Tuscarawas | 385 | 491 | 647 | 807 | 865 | Van Wert | 452 | 461 | 614 | 802 | 846 |
| Vinton | 417 | 518 | 614 | 871 | 967 | Wayne | 405 | 506 | 643 | 830 | 859 |
| Williams | 457 | 460 | 614 | 765 | 897 | Wyandot | 437 | 518 | 614 | 886 | 1058 |

OKLAHOMA

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Fort Smith, AR-OK HMFA | 455 | 458 | 600 | 799 | 901 | Sequoyah |
| Grady County, OK HMFA | 404 | 443 | 600 | 807 | 810 | Grady |
| Lawton, OK MSA | 528 | 540 | 730 | 1010 | 1194 | Comanche |
| Le Flore County, OK HMFA | 473 | 476 | 600 | 787 | 978 | Le Flore |
| Lincoln County, OK HMFA | 411 | 483 | 600 | 817 | 820 | Lincoln |
| Oklahoma City, OK HMFA | 486 | 565 | 723 | 989 | 1188 | Canadian, Cleveland, Logan, McClain, Oklahoma |
| Okmulgee County, OK HMFA | 360 | 510 | 605 | 753 | 809 | Okmulgee |
| Pawnee County, OK HMFA | 379 | 506 | 600 | 752 | 991 | Pawnee |
| Tulsa, OK HMFA | 467 | 567 | 739 | 1002 | 1117 | Creek, Osage, Rogers, Tulsa, Wagoner |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Adair | 423 | 443 | 600 | 755 | 802 | Alfalfa | 423 | 443 | 600 | 751 | 927 |
| Atoka | 423 | 443 | 600 | 747 | 802 | Beaver | 423 | 460 | 600 | 768 | 904 |
| Beckham | 501 | 505 | 683 | 851 | 1029 | Blaine | 446 | 468 | 633 | 933 | 936 |
| Bryan | 469 | 472 | 602 | 834 | 905 | Caddo | 444 | 471 | 600 | 747 | 1063 |
| Carter | 385 | 458 | 619 | 771 | 862 | Cherokee | 357 | 498 | 600 | 747 | 994 |
| Choctaw | 423 | 451 | 600 | 884 | 1031 | Cimarron | 423 | 506 | 600 | 758 | 904 |
| Coal | 423 | 443 | 600 | 880 | 904 | Cotton | 426 | 447 | 605 | 753 | 809 |
| Craig | 423 | 506 | 600 | 797 | 859 | Custer | 485 | 496 | 600 | 884 | 887 |
| Delaware | 457 | 460 | 600 | 846 | 1063 | Dewey | 423 | 460 | 600 | 747 | 839 |
| Ellis | 423 | 506 | 600 | 747 | 904 | Garfield | 415 | 521 | 618 | 824 | 923 |
| Garvin | 379 | 443 | 600 | 747 | 836 | Grant | 423 | 506 | 600 | 747 | 802 |
| Greer | 452 | 528 | 642 | 800 | 967 | Harmon | 423 | 460 | 600 | 769 | 903 |
| Harper | 423 | 460 | 600 | 770 | 904 | Haskell | 423 | 443 | 600 | 828 | 831 |
| Hughes | 423 | 506 | 600 | 771 | 802 | Jackson | 429 | 458 | 600 | 871 | 1063 |
| Jefferson | 423 | 443 | 600 | 747 | 802 | Johnston | 423 | 443 | 600 | 747 | 802 |

SCHEDULE B - FY 2014 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 39

OKLAHOMA continued

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Kay | 467 | 470 | 636 | 823 | 1015 |
| Kiowa | 441 | 444 | 600 | 853 | 904 |
| Love | 423 | 506 | 600 | 835 | 838 |
| McIntosh | 407 | 445 | 602 | 750 | 1066 |
| Marshall | 433 | 455 | 615 | 846 | 894 |
| Murray | 436 | 458 | 619 | 771 | 827 |
| Noble | 423 | 506 | 600 | 811 | 876 |
| Okfuskee | 423 | 503 | 600 | 835 | 838 |
| Payne | 438 | 540 | 703 | 1024 | 1245 |
| Pontotoc | 423 | 506 | 600 | 806 | 1027 |
| Pushmataha | 423 | 443 | 600 | 790 | 884 |
| Seminole | 397 | 476 | 600 | 882 | 915 |
| Texas | 433 | 518 | 614 | 765 | 1087 |
| Washington | 390 | 543 | 656 | 958 | 1143 |
| Woods | 424 | 445 | 602 | 750 | 809 |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Kingfisher | 465 | 488 | 660 | 850 | 1137 |
| Latimer | 423 | 478 | 600 | 867 | 870 |
| McCurtain | 423 | 443 | 600 | 817 | 1005 |
| Major | 423 | 460 | 600 | 884 | 1063 |
| Mayes | 357 | 443 | 600 | 825 | 1063 |
| Muskogee | 375 | 457 | 600 | 839 | 876 |
| Nowata | 425 | 484 | 604 | 752 | 910 |
| Ottawa | 460 | 463 | 627 | 781 | 900 |
| Pittsburg | 392 | 501 | 659 | 821 | 881 |
| Pottawatomie | 533 | 537 | 726 | 919 | 972 |
| Roger Mills | 423 | 460 | 600 | 798 | 802 |
| Stephens | 423 | 443 | 600 | 840 | 1063 |
| Tillman | 423 | 451 | 600 | 779 | 802 |
| Washita | 423 | 506 | 600 | 884 | 1063 |
| Woodward | 485 | 506 | 600 | 884 | 1063 |

OREGON

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Bend, OR MSA | 557 | 645 | 803 | 1147 | 1373 | Deschutes |
| Corvallis, OR MSA | 490 | 629 | 824 | 1214 | 1459 | Benton |
| Eugene-Springfield, OR MSA | 496 | 621 | 834 | 1200 | 1409 | Lane |
| Medford, OR MSA | 610 | 616 | 834 | 1229 | 1385 | Jackson |
| Portland-Vancouver-Hillsboro, OR-WA MSA | 666 | 774 | 922 | 1359 | 1633 | Clackamas, Columbia, Multnomah, Washington, Yamhill |
| Salem, OR MSA | 547 | 578 | 780 | 1149 | 1381 | Marion, Polk |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Baker | 498 | 514 | 654 | 837 | 919 |
| Coos | 465 | 530 | 691 | 979 | 1206 |
| Curry | 515 | 591 | 799 | 1175 | 1226 |
| Gilliam | 411 | 484 | 637 | 919 | 1072 |
| Harney | 411 | 471 | 637 | 793 | 851 |
| Jefferson | 397 | 506 | 637 | 939 | 942 |
| Klamath | 427 | 561 | 692 | 998 | 1207 |
| Lincoln | 563 | 601 | 751 | 1107 | 1110 |
| Malheur | 439 | 489 | 637 | 898 | 958 |
| Sherman | 411 | 537 | 637 | 838 | 1072 |
| Umatilla | 418 | 526 | 702 | 923 | 1243 |
| Wallowa | 411 | 510 | 637 | 793 | 898 |
| Wheeler | 411 | 471 | 637 | 793 | 1072 |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Clatsop | 523 | 568 | 767 | 1093 | 1358 |
| Crook | 426 | 550 | 678 | 999 | 1161 |
| Douglas | 420 | 496 | 654 | 964 | 1158 |
| Grant | 411 | 495 | 637 | 939 | 1128 |
| Hood River | 675 | 704 | 835 | 1230 | 1361 |
| Josephine | 484 | 618 | 814 | 1177 | 1286 |
| Lake | 411 | 537 | 637 | 793 | 1128 |
| Linn | 480 | 556 | 752 | 1095 | 1201 |
| Morrow | 411 | 471 | 637 | 813 | 986 |
| Tillamook | 481 | 607 | 759 | 1050 | 1340 |
| Union | 385 | 478 | 647 | 885 | 1117 |
| Wasco | 524 | 577 | 730 | 1069 | 1187 |

SCHEDULE B - FY 2014 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 40

PENNSYLVANIA

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Allentown-Bethlehem-Easton, PA HMFA | 672 | 771 | 974 | 1219 | 1382 | Carbon, Lehigh, Northampton |
| Altoona, PA MSA | 536 | 571 | 684 | 900 | 1004 | Blair |
| Armstrong County, PA HMFA | 379 | 471 | 637 | 805 | 876 | Armstrong |
| Erie, PA MSA | 433 | 528 | 666 | 832 | 994 | Erie |
| Harrisburg-Carlisle, PA MSA | 594 | 662 | 845 | 1090 | 1129 | Cumberland, Dauphin, Perry |
| Johnstown, PA MSA | 459 | 537 | 637 | 845 | 851 | Cambria |
| Lancaster, PA MSA | 616 | 703 | 898 | 1157 | 1200 | Lancaster |
| Lebanon, PA MSA | 424 | 554 | 713 | 916 | 1012 | Lebanon |
| *Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA | 799 | 942 | 1135 | 1414 | 1518 | Bucks, Chester, Delaware, Montgomery, Philadelphia |
| Pike County, PA HMFA | 908 | 913 | 1161 | 1460 | 1849 | Pike |
| Pittsburgh, PA HMFA | 551 | 633 | 789 | 991 | 1054 | Allegheny, Beaver, Butler, Fayette, Washington, Westmoreland |
| Reading, PA MSA | 523 | 649 | 859 | 1070 | 1148 | Berks |
| Scranton--Wilkes-Barre, PA MSA | 468 | 557 | 694 | 881 | 989 | Lackawanna, Luzerne, Wyoming |
| Sharon, PA HMFA | 461 | 498 | 641 | 809 | 857 | Mercer |
| State College, PA MSA | 679 | 743 | 914 | 1197 | 1242 | Centre |
| Williamsport, PA MSA | 459 | 517 | 655 | 867 | 888 | Lycoming |
| York-Hanover, PA MSA | 497 | 630 | 836 | 1080 | 1153 | York |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Adams | 636 | 640 | 827 | 1099 | 1201 | Bedford | 515 | 530 | 637 | 825 | 851 |
| Bradford | 475 | 481 | 637 | 854 | 858 | Cameron | 463 | 537 | 637 | 922 | 1128 |
| Clarion | 463 | 537 | 637 | 795 | 1012 | Clearfield | 450 | 495 | 637 | 853 | 856 |
| Clinton | 532 | 535 | 724 | 940 | 1175 | Columbia | 522 | 525 | 667 | 858 | 1157 |
| Crawford | 467 | 520 | 643 | 851 | 932 | Elk | 463 | 514 | 637 | 793 | 851 |
| Forest | 561 | 586 | 695 | 1024 | 1231 | Franklin | 499 | 580 | 746 | 992 | 1245 |
| Fulton | 463 | 537 | 637 | 797 | 851 | Greene | 463 | 521 | 637 | 793 | 851 |
| Huntingdon | 510 | 531 | 637 | 908 | 912 | Indiana | 553 | 578 | 685 | 922 | 925 |
| Jefferson | 381 | 523 | 637 | 793 | 876 | Juniata | 414 | 527 | 637 | 905 | 908 |
| Lawrence | 406 | 548 | 683 | 888 | 913 | McKean | 460 | 510 | 637 | 806 | 851 |
| Mifflin | 493 | 496 | 637 | 800 | 851 | Monroe | 562 | 666 | 871 | 1209 | 1327 |
| Montour | 503 | 584 | 692 | 916 | 925 | Northumberland | 515 | 525 | 637 | 835 | 949 |
| Potter | 463 | 537 | 637 | 827 | 991 | Schuylkill | 379 | 489 | 637 | 874 | 880 |
| Snyder | 521 | 544 | 645 | 832 | 862 | Somerset | 446 | 524 | 637 | 793 | 897 |
| Sullivan | 510 | 513 | 637 | 880 | 883 | Susquehanna | 547 | 571 | 677 | 887 | 1035 |
| Tioga | 386 | 546 | 647 | 806 | 984 | Union | 504 | 519 | 693 | 950 | 1089 |
| Venango | 476 | 480 | 642 | 800 | 858 | Warren | 515 | 529 | 637 | 800 | 934 |
| Wayne | 437 | 598 | 709 | 1045 | 1048 | | | | | | |

RHODE ISLAND

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Components of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Newport-Middleton-Portsmouth, RI HMFA | 895 | 901 | 1119 | 1649 | 1982 | Newport County towns of Middletown town, Newport city, Portsmouth town |
| Providence-Fall River, RI-MA HMFA | 663 | 748 | 913 | 1137 | 1361 | Bristol County towns of Barrington town, Bristol town, Warren town |

SCHEDULE B - FY 2014 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 41

RHODE ISLAND continued

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Components of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| | | | | | | Kent County towns of Coventry town, East Greenwich town, Warwick city, West Greenwich town, West Warwick town<br>Newport County towns of Jamestown town, Little Compton town, Tiverton town<br>Providence County towns of Burrillville town, Central Falls city, Cranston city, Cumberland town, East Providence city, Foster town, Glocester town, Johnston town, Lincoln town, North Providence town, North Smithfield town, Pawtucket city, Providence city, Scituate town, Smithfield town, Woonsocket city<br>Washington County towns of Charlestown town, Exeter town, Narragansett town, North Kingstown town, Richmond town, South Kingstown town |
| Westerly-Hopkinton-New Shoreham, RI HMFA..... | 571 | 710 | 960 | 1208 | 1511 | Washington County towns of Hopkinton town, New Shoreham town, Westerly town |

SOUTH CAROLINA

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Anderson, SC MSA..... | 527 | 535 | 652 | 893 | 923 | Anderson |
| Augusta-Richmond County, GA-SC MSA..... | 543 | 612 | 730 | 993 | 1229 | Aiken, Edgefield |
| Charleston-North Charleston-Summerville, SC MSA... | 724 | 754 | 896 | 1160 | 1539 | Berkeley, Charleston, Dorchester |
| Charlotte-Gastonia-Rock Hill, NC-SC HMFA..... | 622 | 686 | 813 | 1096 | 1359 | York |
| Columbia, SC HMFA..... | 617 | 669 | 793 | 1046 | 1326 | Calhoun, Fairfield, Lexington, Richland, Saluda |
| Darlington County, SC HMFA..... | 523 | 547 | 657 | 818 | 991 | Darlington |
| Florence, SC HMFA..... | 518 | 523 | 650 | 810 | 869 | Florence |
| Greenville-Mauldin-Easley, SC MSA..... | 492 | 620 | 735 | 975 | 1154 | Greenville, Pickens |
| Kershaw County, SC HMFA..... | 498 | 539 | 640 | 856 | 1086 | Kershaw |
| Laurens County, SC HMFA..... | 377 | 499 | 634 | 816 | 910 | Laurens |
| Myrtle Beach-North Myrtle Beach-Conway, SC MSA.... | 643 | 648 | 805 | 1003 | 1177 | Horry |
| Spartanburg, SC MSA..... | 429 | 572 | 678 | 906 | 1018 | Spartanburg |
| Sumter, SC MSA..... | 596 | 599 | 769 | 958 | 1188 | Sumter |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Abbeville..... | 472 | 475 | 634 | 861 | 1123 | Allendale..... | 507 | 510 | 635 | 791 | 1125 |
| Bamberg..... | 465 | 469 | 634 | 790 | 1123 | Barnwell..... | 465 | 469 | 634 | 894 | 897 |
| Beaufort..... | 613 | 745 | 883 | 1120 | 1352 | Cherokee..... | 512 | 535 | 634 | 858 | 1123 |
| Chester..... | 512 | 535 | 634 | 827 | 972 | Chesterfield..... | 512 | 535 | 634 | 836 | 1044 |
| Clarendon..... | 465 | 469 | 634 | 790 | 1064 | Colleton..... | 558 | 562 | 708 | 906 | 946 |
| Dillon..... | 465 | 469 | 634 | 905 | 908 | Georgetown..... | 530 | 534 | 722 | 958 | 1207 |
| Greenwood..... | 485 | 488 | 634 | 837 | 875 | Hampton..... | 465 | 469 | 634 | 798 | 847 |
| Jasper..... | 471 | 543 | 734 | 981 | 1071 | Lancaster..... | 511 | 514 | 649 | 893 | 956 |
| Lee..... | 512 | 535 | 634 | 934 | 1123 | McCormick..... | 495 | 498 | 634 | 934 | 937 |
| Marion..... | 512 | 535 | 634 | 797 | 933 | Marlboro..... | 465 | 469 | 634 | 790 | 855 |
| Newberry..... | 518 | 521 | 705 | 908 | 1227 | Oconee..... | 498 | 501 | 634 | 790 | 991 |
| Orangeburg..... | 408 | 534 | 674 | 839 | 1139 | Union..... | 471 | 474 | 641 | 847 | 857 |

SCHEDULE B - FY 2014 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 42

SOUTH CAROLINA continued

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Williamsburg | 377 | 535 | 634 | 814 | 884 |

SOUTH DAKOTA

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Meade County, SD HMFA | 415 | 529 | 655 | 923 | 927 | Meade |
| Rapid City, SD HMFA | 491 | 581 | 776 | 1048 | 1374 | Pennington |
| Sioux City, IA-NE-SD MSA | 414 | 541 | 696 | 914 | 1027 | Union |
| Sioux Falls, SD MSA | 514 | 604 | 760 | 1069 | 1258 | Lincoln, McCook, Minnehaha, Turner |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Aurora | 473 | 479 | 648 | 885 | 888 | Beadle | 434 | 439 | 594 | 798 | 801 |
| Bennett | 434 | 501 | 594 | 875 | 972 | Bon Homme | 434 | 479 | 594 | 833 | 908 |
| Brookings | 396 | 461 | 624 | 920 | 1105 | Brown | 406 | 460 | 623 | 793 | 1103 |
| Brule | 434 | 501 | 594 | 820 | 823 | Buffalo | 506 | 511 | 692 | 862 | 925 |
| Butte | 434 | 486 | 594 | 875 | 878 | Campbell | 434 | 464 | 594 | 820 | 823 |
| Charles Mix | 434 | 501 | 594 | 771 | 794 | Clark | 434 | 439 | 594 | 740 | 794 |
| Clay | 475 | 506 | 650 | 958 | 1151 | Codington | 379 | 459 | 596 | 768 | 796 |
| Corson | 434 | 440 | 594 | 846 | 849 | Custer | 515 | 521 | 705 | 878 | 1168 |
| Davison | 442 | 475 | 642 | 845 | 858 | Day | 434 | 439 | 594 | 875 | 878 |
| Deuel | 434 | 501 | 594 | 859 | 862 | Dewey | 434 | 439 | 594 | 826 | 837 |
| Douglas | 434 | 439 | 594 | 740 | 794 | Edmunds | 479 | 485 | 656 | 967 | 970 |
| Fall River | 541 | 548 | 741 | 1016 | 1020 | Faulk | 434 | 501 | 594 | 820 | 823 |
| Grant | 434 | 467 | 594 | 822 | 1020 | Gregory | 434 | 501 | 594 | 875 | 878 |
| Haakon | 434 | 440 | 594 | 875 | 878 | Hamlin | 471 | 474 | 594 | 875 | 878 |
| Hand | 434 | 451 | 594 | 866 | 869 | Hanson | 438 | 444 | 600 | 747 | 802 |
| Harding | 434 | 440 | 594 | 820 | 823 | Hughes | 468 | 473 | 640 | 943 | 1134 |
| Hutchinson | 434 | 496 | 594 | 794 | 1052 | Hyde | 434 | 440 | 594 | 875 | 878 |
| Jackson | 434 | 501 | 594 | 875 | 878 | Jerauld | 434 | 466 | 594 | 875 | 878 |
| Jones | 434 | 440 | 594 | 875 | 878 | Kingsbury | 434 | 457 | 594 | 875 | 954 |
| Lake | 434 | 501 | 594 | 875 | 878 | Lawrence | 415 | 482 | 608 | 866 | 869 |
| Lyman | 434 | 480 | 594 | 875 | 1052 | McPherson | 434 | 439 | 594 | 820 | 823 |
| Marshall | 434 | 439 | 594 | 875 | 878 | Mellette | 434 | 440 | 594 | 875 | 878 |
| Miner | 434 | 501 | 594 | 820 | 823 | Moody | 434 | 439 | 594 | 873 | 876 |
| Perkins | 468 | 473 | 640 | 797 | 855 | Potter | 434 | 501 | 594 | 740 | 794 |
| Roberts | 434 | 497 | 594 | 829 | 832 | Sanborn | 434 | 501 | 594 | 875 | 957 |
| Shannon | 434 | 483 | 594 | 790 | 817 | Spink | 480 | 501 | 594 | 875 | 878 |
| Stanley | 515 | 522 | 705 | 1039 | 1088 | Sully | 498 | 505 | 682 | 849 | 911 |
| Todd | 434 | 440 | 594 | 740 | 794 | Tripp | 434 | 439 | 594 | 805 | 808 |
| Walworth | 434 | 501 | 594 | 875 | 878 | Yankton | 424 | 439 | 594 | 829 | 990 |
| Ziebach | 434 | 462 | 594 | 868 | 986 | | | | | | |

SCHEDULE B - FY 2014 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 43

TENNESSEE

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Chattanooga, TN-GA MSA | 452 | 546 | 679 | 923 | 1041 | Hamilton, Marion, Sequatchie |
| Clarksville, TN-KY HMFA | 516 | 588 | 767 | 1016 | 1102 | Montgomery |
| Cleveland, TN MSA | 446 | 480 | 649 | 835 | 1075 | Bradley, Polk |
| Hickman County, TN HMFA | 458 | 467 | 632 | 931 | 1095 | Hickman |
| Jackson, TN MSA | 408 | 537 | 685 | 913 | 997 | Chester, Madison |
| Johnson City, TN MSA | 433 | 514 | 646 | 883 | 1108 | Carter, Unicoi, Washington |
| Kingsport-Bristol-Bristol, TN-VA MSA | 432 | 480 | 617 | 807 | 913 | Hawkins, Sullivan |
| Knoxville, TN MSA | 492 | 628 | 774 | 1034 | 1162 | Anderson, Blount, Knox, Loudon, Union |
| Macon County, TN HMFA | 408 | 416 | 563 | 701 | 752 | Macon |
| Memphis, TN-MS-AR HMFA | 576 | 658 | 780 | 1066 | 1188 | Fayette, Shelby, Tipton |
| Morristown, TN MSA | 439 | 485 | 637 | 854 | 998 | Grainger, Hamblen, Jefferson |
| Nashville-Davidson--Murfreesboro--Franklin, TN MSA | 616 | 711 | 851 | 1131 | 1214 | Cannon, Cheatham, Davidson, Dickson, Robertson, Rutherford, Sumner, Trousdale, Williamson, Wilson |
| Smith County, TN HMFA | 406 | 426 | 573 | 777 | 799 | Smith |
| Stewart County, TN HMFA | 379 | 433 | 563 | 773 | 809 | Stewart |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Bedford | 419 | 520 | 616 | 868 | 1028 | Benton | 383 | 416 | 563 | 830 | 997 |
| Bledsoe | 383 | 430 | 563 | 701 | 796 | Campbell | 383 | 451 | 563 | 739 | 997 |
| Carroll | 383 | 416 | 563 | 701 | 861 | Claiborne | 348 | 470 | 563 | 701 | 997 |
| Clay | 383 | 416 | 563 | 830 | 834 | Cocke | 383 | 462 | 563 | 814 | 817 |
| Coffee | 384 | 464 | 615 | 844 | 899 | Crockett | 396 | 491 | 582 | 735 | 895 |
| Cumberland | 400 | 492 | 588 | 736 | 786 | Decatur | 383 | 475 | 563 | 733 | 939 |
| DeKalb | 383 | 416 | 563 | 822 | 825 | Dyer | 424 | 426 | 577 | 778 | 781 |
| Fentress | 383 | 416 | 563 | 717 | 785 | Franklin | 396 | 431 | 583 | 779 | 782 |
| Gibson | 451 | 454 | 563 | 771 | 774 | Giles | 421 | 522 | 619 | 888 | 891 |
| Greene | 397 | 487 | 584 | 776 | 787 | Grundy | 383 | 433 | 563 | 830 | 832 |
| Hancock | 383 | 423 | 563 | 773 | 997 | Hardeman | 383 | 475 | 563 | 708 | 924 |
| Hardin | 383 | 416 | 563 | 705 | 997 | Haywood | 380 | 538 | 638 | 795 | 853 |
| Henderson | 384 | 418 | 565 | 704 | 755 | Henry | 394 | 488 | 579 | 721 | 1025 |
| Houston | 335 | 416 | 563 | 710 | 752 | Humphreys | 383 | 475 | 563 | 737 | 752 |
| Jackson | 383 | 416 | 563 | 830 | 832 | Johnson | 383 | 416 | 563 | 701 | 752 |
| Lake | 440 | 442 | 563 | 830 | 906 | Lauderdale | 383 | 416 | 563 | 798 | 988 |
| Lawrence | 383 | 435 | 563 | 701 | 777 | Lewis | 383 | 475 | 563 | 830 | 997 |
| Lincoln | 383 | 430 | 563 | 701 | 946 | McMinn | 348 | 487 | 585 | 770 | 880 |
| McNairy | 358 | 416 | 563 | 701 | 757 | Marshall | 442 | 481 | 651 | 829 | 881 |
| Maury | 462 | 465 | 618 | 830 | 948 | Meigs | 383 | 430 | 563 | 830 | 832 |
| Monroe | 383 | 427 | 563 | 753 | 796 | Moore | 408 | 459 | 601 | 805 | 850 |
| Morgan | 383 | 444 | 563 | 701 | 863 | Obion | 368 | 416 | 563 | 702 | 752 |
| Overton | 383 | 419 | 563 | 830 | 997 | Perry | 383 | 475 | 563 | 701 | 796 |
| Pickett | 383 | 430 | 563 | 701 | 796 | Putnam | 406 | 458 | 598 | 855 | 939 |
| Rhea | 455 | 459 | 563 | 753 | 775 | Roane | 413 | 449 | 608 | 829 | 833 |
| Scott | 398 | 475 | 563 | 791 | 997 | Sevier | 491 | 541 | 723 | 900 | 1160 |
| Van Buren | 383 | 430 | 563 | 701 | 796 | Warren | 383 | 416 | 563 | 812 | 997 |

SCHEDULE B - FY 2014 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 44

TENNESSEE continued

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Wayne | 383 | 416 | 563 | 821 | 997 |
| White | 404 | 439 | 594 | 771 | 794 |
| Weakley | 421 | 445 | 563 | 786 | 790 |

TEXAS

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Abilene, TX MSA | 510 | 586 | 790 | 1000 | 1276 | Callahan, Jones, Taylor |
| Amarillo, TX MSA | 474 | 560 | 736 | 1004 | 1051 | Armstrong, Carson, Potter, Randall |
| Aransas County, TX HMFA | 435 | 519 | 702 | 1034 | 1093 | Aransas |
| Atascosa County, TX HMFA | 410 | 526 | 689 | 922 | 1049 | Atascosa |
| Austin County, TX HMFA | 471 | 533 | 700 | 1031 | 1181 | Austin |
| *Austin-Round Rock-San Marcos, TX MSA | 696 | 853 | 1074 | 1454 | 1762 | Bastrop, Caldwell, Hays, Travis, Williamson |
| Beaumont-Port Arthur, TX MSA | 518 | 650 | 806 | 1056 | 1077 | Hardin, Jefferson, Orange |
| Brazoria County, TX HMFA | 640 | 644 | 828 | 1141 | 1408 | Brazoria |
| Brownsville-Harlingen, TX MSA | 459 | 542 | 676 | 885 | 984 | Cameron |
| Calhoun County, TX HMFA | 522 | 525 | 710 | 887 | 1114 | Calhoun |
| College Station-Bryan, TX MSA | 699 | 704 | 868 | 1255 | 1505 | Brazos, Burleson, Robertson |
| Corpus Christi, TX HMFA | 546 | 654 | 839 | 1111 | 1307 | Nueces, San Patricio |
| Dallas, TX HMFA | 602 | 722 | 913 | 1218 | 1471 | Collin, Dallas, Delta, Denton, Ellis, Hunt, Kaufman, Rockwall |
| El Paso, TX MSA | 553 | 605 | 747 | 1059 | 1270 | El Paso |
| *Fort Worth-Arlington, TX HMFA | 620 | 725 | 938 | 1258 | 1498 | Johnson, Parker, Tarrant |
| *Houston-Baytown-Sugar Land, TX HMFA | 623 | 750 | 926 | 1264 | 1563 | Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, San Jacinto, Waller |
| Kendall County, TX HMFA | 533 | 712 | 844 | 1244 | 1495 | Kendall |
| Killeen-Temple-Fort Hood, TX HMFA | 537 | 551 | 734 | 1082 | 1227 | Bell, Coryell |
| Lampasas County, TX HMFA | 466 | 537 | 637 | 939 | 1049 | Lampasas |
| Laredo, TX MSA | 573 | 618 | 777 | 1021 | 1057 | Webb |
| Longview, TX HMFA | 645 | 650 | 798 | 994 | 1277 | Gregg, Upshur |
| Lubbock, TX MSA | 505 | 589 | 774 | 1130 | 1301 | Crosby, Lubbock |
| McAllen-Edinburg-Mission, TX MSA | 444 | 503 | 655 | 816 | 996 | Hidalgo |
| Medina County, TX HMFA | 460 | 512 | 693 | 916 | 991 | Medina |
| Midland, TX MSA | 556 | 717 | 935 | 1164 | 1292 | Midland |
| Odessa, TX MSA | 665 | 771 | 992 | 1263 | 1326 | Ector |
| Rusk County, TX HMFA | 502 | 506 | 682 | 902 | 1090 | Rusk |
| San Angelo, TX MSA | 469 | 547 | 730 | 1013 | 1085 | Irion, Tom Green |
| San Antonio-New Braunfels, TX HMFA | 542 | 683 | 857 | 1117 | 1226 | Bandera, Bexar, Comal, Guadalupe, Wilson |
| Sherman-Denison, TX MSA | 497 | 623 | 806 | 1085 | 1381 | Grayson |
| Texarkana, TX-Texarkana, AR MSA | 441 | 573 | 704 | 877 | 941 | Bowie |
| Tyler, TX MSA | 628 | 738 | 875 | 1161 | 1169 | Smith |
| Victoria, TX HMFA | 542 | 578 | 731 | 910 | 1166 | Goliad, Victoria |
| Waco, TX MSA | 475 | 558 | 755 | 989 | 1106 | McLennan |
| Wichita Falls, TX MSA | 424 | 570 | 712 | 1009 | 1155 | Archer, Clay, Wichita |
| Wise County, TX HMFA | 473 | 588 | 795 | 990 | 1062 | Wise |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Anderson | 474 | 565 | 670 | 875 | 1187 |
| Angelina | 539 | 589 | 713 | 933 | 1050 |
| Baylor | 451 | 471 | 637 | 793 | 924 |
| Andrews | 451 | 493 | 637 | 939 | 942 |
| Bailey | 463 | 508 | 654 | 815 | 949 |
| Bee | 534 | 547 | 661 | 974 | 1071 |

SCHEDULE B - FY 2014 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 45

TEXAS continued

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Blanco | 570 | 595 | 805 | 1003 | 1076 |
| Bosque | 451 | 491 | 637 | 935 | 1053 |
| Briscoe | 451 | 495 | 637 | 849 | 924 |
| Brown | 398 | 494 | 669 | 858 | 1185 |
| Camp | 451 | 537 | 637 | 824 | 939 |
| Castro | 451 | 537 | 637 | 793 | 919 |
| Childress | 470 | 560 | 664 | 827 | 963 |
| Coke | 379 | 471 | 637 | 793 | 924 |
| Collingsworth | 451 | 495 | 637 | 939 | 942 |
| Comanche | 451 | 471 | 637 | 793 | 924 |
| Cooke | 576 | 601 | 813 | 1062 | 1086 |
| Crane | 528 | 580 | 746 | 929 | 1082 |
| Culberson | 451 | 495 | 637 | 912 | 924 |
| Dawson | 451 | 531 | 637 | 939 | 942 |
| DeWitt | 468 | 471 | 637 | 793 | 924 |
| Dimmit | 451 | 537 | 637 | 793 | 851 |
| Duval | 501 | 597 | 708 | 882 | 1027 |
| Edwards | 451 | 495 | 637 | 793 | 924 |
| Falls | 438 | 481 | 651 | 899 | 902 |
| Fayette | 467 | 488 | 660 | 833 | 882 |
| Floyd | 451 | 537 | 637 | 939 | 1098 |
| Franklin | 451 | 471 | 637 | 939 | 1128 |
| Frio | 451 | 537 | 637 | 939 | 1128 |
| Garza | 451 | 537 | 637 | 939 | 942 |
| Glasscock | 462 | 507 | 653 | 813 | 947 |
| Gray | 451 | 497 | 637 | 799 | 1011 |
| Hale | 465 | 500 | 637 | 867 | 1057 |
| Hamilton | 451 | 471 | 637 | 939 | 942 |
| Hardeman | 457 | 501 | 645 | 803 | 936 |
| Hartley | 451 | 471 | 637 | 884 | 924 |
| Hemphill | 496 | 578 | 701 | 873 | 1017 |
| Hill | 496 | 517 | 700 | 950 | 1010 |
| Hood | 627 | 631 | 854 | 1143 | 1209 |
| Houston | 390 | 484 | 655 | 936 | 939 |
| Hudspeth | 451 | 495 | 637 | 939 | 942 |
| Jack | 472 | 562 | 666 | 829 | 1180 |
| Jasper | 515 | 565 | 727 | 905 | 972 |
| Jim Hogg | 451 | 537 | 637 | 808 | 924 |
| Karnes | 515 | 537 | 637 | 939 | 1128 |
| Kent | 536 | 588 | 757 | 943 | 1098 |
| Kimble | 477 | 498 | 674 | 839 | 901 |
| Kinney | 451 | 488 | 637 | 939 | 942 |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Borden | 462 | 507 | 653 | 813 | 947 |
| Brewster | 545 | 549 | 743 | 925 | 1078 |
| Brooks | 451 | 537 | 637 | 939 | 942 |
| Burnet | 483 | 504 | 682 | 1005 | 1208 |
| Cass | 451 | 499 | 637 | 877 | 1128 |
| Cherokee | 451 | 530 | 637 | 828 | 890 |
| Cochran | 451 | 471 | 637 | 939 | 942 |
| Coleman | 451 | 471 | 637 | 939 | 1128 |
| Colorado | 417 | 471 | 637 | 914 | 1127 |
| Concho | 720 | 752 | 1017 | 1267 | 1475 |
| Cottle | 451 | 518 | 637 | 939 | 942 |
| Crockett | 451 | 471 | 637 | 939 | 942 |
| Dallam | 451 | 537 | 637 | 930 | 934 |
| Deaf Smith | 452 | 472 | 638 | 889 | 892 |
| Dickens | 451 | 495 | 637 | 793 | 924 |
| Donley | 451 | 471 | 637 | 793 | 924 |
| Eastland | 468 | 471 | 637 | 793 | 1121 |
| Erath | 525 | 528 | 694 | 932 | 935 |
| Fannin | 388 | 482 | 652 | 896 | 1056 |
| Fisher | 451 | 471 | 637 | 939 | 942 |
| Foard | 451 | 495 | 637 | 939 | 942 |
| Freestone | 467 | 580 | 785 | 978 | 1139 |
| Gaines | 452 | 472 | 639 | 898 | 956 |
| Gillespie | 619 | 647 | 875 | 1090 | 1550 |
| Gonzales | 468 | 471 | 637 | 939 | 945 |
| Grimes | 451 | 509 | 637 | 849 | 924 |
| Hall | 425 | 495 | 637 | 939 | 942 |
| Hansford | 451 | 537 | 637 | 842 | 947 |
| Harrison | 401 | 511 | 637 | 836 | 851 |
| Haskell | 451 | 495 | 637 | 939 | 942 |
| Henderson | 554 | 560 | 686 | 899 | 1109 |
| Hockley | 503 | 527 | 711 | 886 | 950 |
| Hopkins | 518 | 521 | 705 | 905 | 1138 |
| Howard | 389 | 483 | 654 | 847 | 971 |
| Hutchinson | 503 | 559 | 710 | 901 | 949 |
| Jackson | 447 | 591 | 752 | 1019 | 1332 |
| Jeff Davis | 451 | 537 | 637 | 849 | 924 |
| Jim Wells | 538 | 584 | 760 | 947 | 1016 |
| Kenedy | 529 | 580 | 747 | 996 | 1084 |
| Kerr | 619 | 623 | 788 | 1114 | 1118 |
| King | 462 | 507 | 653 | 813 | 947 |
| Kleberg | 517 | 520 | 704 | 966 | 1247 |

SCHEDULE B - FY 2014 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 46

TEXAS continued

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Knox | 451 | 495 | 637 | 793 | 851 |
| Lamb | 451 | 537 | 637 | 851 | 1026 |
| Lavaca | 404 | 471 | 637 | 914 | 924 |
| Leon | 462 | 495 | 652 | 848 | 1018 |
| Lipscomb | 451 | 471 | 637 | 793 | 851 |
| Llano | 451 | 471 | 637 | 939 | 942 |
| Lynn | 451 | 537 | 637 | 939 | 942 |
| McMullen | 462 | 507 | 653 | 962 | 966 |
| Marion | 451 | 471 | 637 | 793 | 924 |
| Mason | 451 | 495 | 637 | 939 | 942 |
| Maverick | 422 | 537 | 637 | 906 | 924 |
| Milam | 451 | 502 | 637 | 939 | 1128 |
| Mitchell | 451 | 537 | 637 | 916 | 1128 |
| Moore | 550 | 554 | 683 | 851 | 1133 |
| Motley | 451 | 495 | 637 | 793 | 924 |
| Navarro | 555 | 558 | 732 | 918 | 983 |
| Nolan | 451 | 537 | 637 | 939 | 1128 |
| Oldham | 484 | 576 | 683 | 1006 | 1210 |
| Panola | 451 | 471 | 637 | 813 | 1128 |
| Pecos | 464 | 533 | 646 | 854 | 1144 |
| Presidio | 451 | 537 | 637 | 939 | 942 |
| Reagan | 451 | 517 | 637 | 794 | 924 |
| Red River | 451 | 471 | 637 | 834 | 1128 |
| Refugio | 460 | 480 | 650 | 930 | 943 |
| Runnels | 451 | 537 | 637 | 939 | 1128 |
| San Augustine | 468 | 471 | 637 | 793 | 1100 |
| Schleicher | 451 | 471 | 637 | 793 | 924 |
| Shackelford | 451 | 495 | 637 | 939 | 942 |
| Sherman | 451 | 537 | 637 | 880 | 924 |
| Starr | 451 | 471 | 637 | 793 | 1016 |
| Sterling | 491 | 585 | 694 | 995 | 1007 |
| Sutton | 451 | 519 | 637 | 815 | 924 |
| Terrell | 451 | 537 | 637 | 849 | 924 |
| Throckmorton | 451 | 495 | 637 | 939 | 942 |
| Trinity | 451 | 531 | 637 | 939 | 1128 |
| Upton | 451 | 537 | 637 | 864 | 924 |
| Val Verde | 461 | 471 | 637 | 923 | 926 |
| Walker | 493 | 602 | 714 | 970 | 973 |
| Washington | 519 | 612 | 732 | 931 | 978 |
| Wheeler | 451 | 537 | 637 | 915 | 924 |
| Willacy | 455 | 475 | 643 | 853 | 1139 |
| Wood | 487 | 490 | 663 | 891 | 1130 |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Lamar | 451 | 537 | 637 | 928 | 1104 |
| La Salle | 451 | 471 | 637 | 939 | 942 |
| Lee | 451 | 537 | 637 | 939 | 942 |
| Limestone | 533 | 567 | 753 | 1060 | 1070 |
| Live Oak | 451 | 537 | 637 | 793 | 851 |
| Loving | 462 | 507 | 653 | 871 | 947 |
| McCulloch | 451 | 471 | 637 | 926 | 930 |
| Madison | 451 | 537 | 637 | 939 | 942 |
| Martin | 451 | 537 | 637 | 793 | 924 |
| Matagorda | 427 | 530 | 717 | 972 | 1270 |
| Menard | 451 | 475 | 637 | 864 | 924 |
| Mills | 451 | 496 | 637 | 939 | 1128 |
| Montague | 469 | 489 | 662 | 932 | 935 |
| Morris | 451 | 478 | 637 | 913 | 924 |
| Nacogdoches | 551 | 571 | 716 | 892 | 957 |
| Newton | 451 | 528 | 637 | 793 | 851 |
| Ochiltree | 456 | 543 | 644 | 907 | 934 |
| Palo Pinto | 467 | 531 | 719 | 963 | 1010 |
| Parmer | 451 | 537 | 637 | 835 | 1078 |
| Polk | 463 | 474 | 637 | 933 | 1074 |
| Rains | 451 | 471 | 637 | 939 | 942 |
| Real | 451 | 471 | 637 | 939 | 942 |
| Reeves | 451 | 506 | 637 | 939 | 1128 |
| Roberts | 462 | 507 | 653 | 813 | 947 |
| Sabine | 451 | 537 | 637 | 939 | 942 |
| San Saba | 451 | 471 | 637 | 866 | 1128 |
| Scurry | 468 | 471 | 637 | 939 | 942 |
| Shelby | 451 | 471 | 637 | 793 | 924 |
| Somervell | 451 | 537 | 637 | 939 | 1128 |
| Stephens | 469 | 489 | 662 | 865 | 960 |
| Stonewall | 451 | 506 | 637 | 931 | 934 |
| Swisher | 451 | 471 | 637 | 856 | 924 |
| Terry | 451 | 486 | 637 | 816 | 924 |
| Titus | 379 | 498 | 637 | 798 | 917 |
| Tyler | 451 | 493 | 637 | 939 | 942 |
| Uvalde | 487 | 537 | 637 | 875 | 924 |
| Van Zandt | 513 | 535 | 724 | 937 | 968 |
| Ward | 451 | 537 | 637 | 793 | 851 |
| Wharton | 419 | 520 | 704 | 930 | 941 |
| Wilbarger | 475 | 496 | 671 | 912 | 973 |
| Winkler | 451 | 471 | 637 | 939 | 942 |
| Yoakum | 462 | 507 | 653 | 884 | 947 |

SCHEDULE B - FY 2014 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 47

TEXAS continued

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Young | 436 | 542 | 733 | 940 | 980 |
| Zavala | 451 | 537 | 637 | 939 | 942 |
| Zapata | 451 | 471 | 637 | 793 | 924 |

UTAH

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Logan, UT-ID MSA | 478 | 481 | 637 | 917 | 1118 | Cache |
| Ogden-Clearfield, UT MSA | 481 | 589 | 772 | 1089 | 1307 | Davis, Morgan, Weber |
| Provo-Orem, UT MSA | 477 | 610 | 729 | 1054 | 1291 | Juab, Utah |
| Salt Lake City, UT HMFA | 589 | 707 | 876 | 1249 | 1471 | Salt Lake |
| St. George, UT MSA | 499 | 573 | 753 | 1033 | 1327 | Washington |
| Summit County, UT HMFA | 615 | 676 | 914 | 1268 | 1272 | Summit |
| Tooele County, UT HMFA | 545 | 575 | 767 | 990 | 1257 | Tooele |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Beaver | 474 | 526 | 624 | 863 | 866 |
| Carbon | 472 | 475 | 623 | 776 | 882 |
| Duchesne | 510 | 567 | 672 | 990 | 1190 |
| Garfield | 484 | 488 | 655 | 816 | 948 |
| Iron | 421 | 525 | 623 | 878 | 1103 |
| Millard | 473 | 525 | 623 | 918 | 1079 |
| Rich | 598 | 664 | 787 | 980 | 1229 |
| Sanpete | 481 | 484 | 637 | 793 | 851 |
| Uintah | 667 | 671 | 908 | 1227 | 1421 |
| Wayne | 473 | 525 | 623 | 885 | 999 |
| Box Elder | 473 | 525 | 623 | 918 | 1103 |
| Daggett | 586 | 651 | 772 | 961 | 1205 |
| Emery | 473 | 525 | 623 | 776 | 935 |
| Grand | 532 | 590 | 700 | 1031 | 1035 |
| Kane | 600 | 666 | 790 | 1164 | 1168 |
| Piute | 591 | 657 | 779 | 970 | 1216 |
| San Juan | 473 | 525 | 623 | 841 | 844 |
| Sevier | 473 | 525 | 623 | 805 | 963 |
| Wasatch | 639 | 709 | 841 | 1239 | 1243 |

VERMONT

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Components of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Burlington-South Burlington, VT MSA | 923 | 1003 | 1309 | 1639 | 1925 | Chittenden County towns of Bolton town, Buels gore, Burlington city, Charlotte town, Colchester town, Essex town, Hinesburg town, Huntington town, Jericho town, Milton town, Richmond town, St. George town, Shelburne town, South Burlington city, Underhill town, Westford town, Williston town, Winooski city<br>Franklin County towns of Bakersfield town, Berkshire town, Enosburg town, Fairfax town, Fairfield town, Fletcher town, Franklin town, Georgia town, Highgate town, Montgomery town, Richford town, St. Albans city, St. Albans town, Sheldon town, Swanton town<br>Grand Isle County towns of Alburg town, Grand Isle town, Isle La Motte town, North Hero town, South Hero town |

SCHEDULE B - FY 2014 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 48

VERMONT continued

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Towns within nonmetropolitan counties |
|---|---|---|---|---|---|---|
| Addison County, VT | 674 | 734 | 870 | 1206 | 1458 | Addison town, Bridport town, Bristol town, Cornwall town, Ferrisburgh town, Goshen town, Granville town, Hancock town, Leicester town, Lincoln town, Middlebury town, Monkton town, New Haven town, Orwell town, Panton town, Ripton town, Salisbury town, Shoreham town, Starksboro town, Vergennes city, Waltham town, Weybridge town, Whiting town |
| Bennington County, VT | 516 | 666 | 836 | 1056 | 1177 | Arlington town, Bennington town, Dorset town, Glastenbury town, Landgrove town, Manchester town, Peru town, Pownal town, Readsboro town, Rupert town, Sandgate town, Searsburg town, Shaftsbury town, Stamford town, Sunderland town, Winhall town, Woodford town |
| Caledonia County, VT | 541 | 572 | 678 | 844 | 1033 | Barnet town, Burke town, Danville town, Groton town, Hardwick town, Kirby town, Lyndon town, Newark town, Peacham town, Ryegate town, St. Johnsbury town, Sheffield town, Stannard town, Sutton town, Walden town, Waterford town, Wheelock town |
| Essex County, VT | 516 | 568 | 674 | 839 | 1079 | Averill town, Avery's gore, Bloomfield town, Brighton town, Brunswick town, Canaan town, Concord town, East Haven town, Ferdinand town, Granby town, Guildhall town, Lemington town, Lewis town, Lunenburg town, Maidstone town, Norton town, Victory town, Warner's grant, Warren's gore |
| Lamoille County, VT | 625 | 756 | 942 | 1369 | 1658 | Belvidere town, Cambridge town, Eden town, Elmore town, Hyde Park town, Johnson town, Morristown town, Stowe town, Waterville town, Wolcott town |
| Orange County, VT | 484 | 680 | 814 | 1014 | 1442 | Bradford town, Braintree town, Brookfield town, Chelsea town, Corinth town, Fairlee town, Newbury town, Orange town, Randolph town, Strafford town, Thetford town, Topsham town, Tunbridge town, Vershire town, Washington town, West Fairlee town, Williamstown town |
| Orleans County, VT | 571 | 591 | 707 | 885 | 959 | Albany town, Barton town, Brownington town, Charleston town, Coventry town, Craftsbury town, Derby town, Glover town, Greensboro town, Holland town, Irasburg town, Jay town, Lowell town, Morgan town, Newport city, Newport town, Troy town, Westfield town, Westmore town |
| Rutland County, VT | 590 | 651 | 825 | 1027 | 1253 | Benson town, Brandon town, Castleton town, Chittenden town, Clarendon town, Danby town, Fair Haven town, Hubbardton town, Ira town, Killington town, Mendon town, Middletown Springs town, Mount Holly town, Mount Tabor town, Pawlet town, Pittsfield town, Pittsford town, Poultney town, Proctor town, Rutland city, Rutland town, Shrewsbury town, Sudbury town, Tinmouth town, Wallingford town, Wells town, West Haven town, West Rutland town |
| Washington County, VT | 722 | 726 | 900 | 1142 | 1428 | Barre city, Barre town, Berlin town, Cabot town, Calais town, Duxbury town, East Montpelier town, Fayston town, Marshfield town, Middlesex town, Montpelier city, Moretown town, Northfield town, Plainfield town, Roxbury town, Waitsfield town, Warren town, Waterbury town, Woodbury town, Worcester town |
| Windham County, VT | 575 | 647 | 832 | 1053 | 1325 | Athens town, Brattleboro town, Brookline town, Dover town, |

SCHEDULE B - FY 2014 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 49

VERMONT continued

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Towns within nonmetropolitan counties |
|---|---|---|---|---|---|---|
| | | | | | | Dummerston town, Grafton town, Guilford town, Halifax town, Jamaica town, Londonderry town, Marlboro town, Newfane town, Putney town, Rockingham town, Somerset town, Stratton town, Townshend town, Vernon town, Wardsboro town, Westminster town, Whitingham town, Wilmington town, Windham town |
| Windsor County, VT | 677 | 682 | 885 | 1121 | 1231 | Andover town, Baltimore town, Barnard town, Bethel town, Bridgewater town, Cavendish town, Chester town, Hartford town, Hartland town, Ludlow town, Norwich town, Plymouth town, Pomfret town, Reading town, Rochester town, Royalton town, Sharon town, Springfield town, Stockbridge town, Weathersfield town, Weston town, West Windsor town, Windsor town, Woodstock town |

VIRGINIA

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Blacksburg-Christiansburg-Radford, VA HMFA | 514 | 604 | 716 | 1002 | 1268 | Montgomery, Radford city |
| Charlottesville, VA MSA | 643 | 850 | 1008 | 1283 | 1455 | Albemarle, Fluvanna, Greene, Nelson, Charlottesville city |
| Danville, VA MSA | 395 | 502 | 617 | 874 | 877 | Pittsylvania, Danville city |
| Franklin County, VA HMFA | 427 | 488 | 617 | 788 | 936 | Franklin |
| Giles County, VA HMFA | 471 | 520 | 617 | 899 | 1021 | Giles |
| Harrisonburg, VA MSA | 564 | 568 | 740 | 940 | 1311 | Rockingham, Harrisonburg city |
| Kingsport-Bristol-Bristol, TN-VA MSA | 432 | 480 | 617 | 807 | 913 | Scott, Washington, Bristol city |
| Louisa County, VA HMFA | 575 | 605 | 717 | 1057 | 1060 | Louisa |
| Lynchburg, VA MSA | 492 | 538 | 657 | 841 | 969 | Amherst, Appomattox, Bedford, Campbell, Bedford city, Lynchburg city |
| Pulaski County, VA HMFA | 498 | 520 | 617 | 787 | 974 | Pulaski |
| *Richmond, VA HMFA | 790 | 830 | 984 | 1294 | 1568 | Amelia, Caroline, Charles, Chesterfield, Cumberland, Dinwiddie, Goochland, Hanover, Henrico, King and Queen, King William, New Kent, Powhatan, Prince George, Sussex, Colonial Heights city, Hopewell city, Petersburg city, Richmond city |
| Roanoke, VA HMFA | 498 | 578 | 720 | 943 | 1069 | Botetourt, Craig, Roanoke, Roanoke city, Salem city |
| *Virginia Beach-Norfolk-Newport News, VA-NC MSA | 913 | 939 | 1130 | 1562 | 1966 | Gloucester, Isle of Wight, James, Mathews, Surry, York, Chesapeake city, Hampton city, Newport News city, Norfolk city, Poquoson city, Portsmouth city, Suffolk city, Virginia Beach city, Williamsburg city |
| Warren County, VA HMFA | 682 | 687 | 914 | 1297 | 1302 | Warren |
| Washington-Arlington-Alexandria, DC-VA-MD HMFA | 1176 | 1239 | 1469 | 1966 | 2470 | Arlington, Clarke, Fairfax, Fauquier, Loudoun, Prince William, Spotsylvania, Stafford, Alexandria city, Fairfax city, Falls Church city, Fredericksburg city, Manassas city, Manassas Park city |
| Winchester, VA-WV MSA | 569 | 621 | 804 | 1093 | 1365 | Frederick, Winchester city |

SCHEDULE B - FY 2014 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 50

VIRGINIA continued

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Accomack | 593 | 619 | 734 | 914 | 1167 |
| Augusta | 461 | 569 | 719 | 948 | 1258 |
| Bland | 498 | 520 | 617 | 768 | 991 |
| Buchanan | 498 | 520 | 617 | 768 | 825 |
| Carroll | 498 | 520 | 617 | 835 | 1047 |
| Culpeper | 490 | 642 | 824 | 1214 | 1459 |
| Essex | 607 | 702 | 832 | 1036 | 1336 |
| Grayson | 498 | 520 | 617 | 814 | 1093 |
| Halifax | 478 | 481 | 617 | 787 | 825 |
| Highland | 498 | 520 | 617 | 909 | 912 |
| Lancaster | 589 | 593 | 802 | 999 | 1288 |
| Lunenburg | 453 | 456 | 617 | 768 | 825 |
| Mecklenburg | 498 | 520 | 617 | 815 | 890 |
| Northampton | 520 | 523 | 708 | 882 | 1192 |
| Nottoway | 578 | 604 | 716 | 985 | 988 |
| Page | 527 | 540 | 652 | 812 | 871 |
| Prince Edward | 530 | 533 | 705 | 908 | 942 |
| Richmond | 528 | 531 | 719 | 1059 | 1153 |
| Russell | 498 | 520 | 617 | 848 | 991 |
| Smyth | 498 | 520 | 617 | 769 | 945 |
| Tazewell | 498 | 520 | 617 | 780 | 878 |
| Wise | 498 | 520 | 617 | 768 | 976 |
| Buena Vista city | 469 | 538 | 638 | 795 | 1114 |
| Covington city | 498 | 502 | 617 | 909 | 991 |
| Franklin city | 563 | 567 | 748 | 932 | 1000 |
| Lexington city | 469 | 538 | 638 | 795 | 1114 |
| Norton city | 498 | 520 | 617 | 768 | 976 |
| Waynesboro city | 461 | 569 | 719 | 948 | 1258 |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|
| Alleghany | 498 | 502 | 617 | 909 | 991 |
| Bath | 498 | 520 | 617 | 795 | 991 |
| Brunswick | 453 | 456 | 617 | 768 | 1093 |
| Buckingham | 523 | 546 | 647 | 953 | 1146 |
| Charlotte | 479 | 482 | 617 | 835 | 838 |
| Dickenson | 453 | 456 | 617 | 768 | 825 |
| Floyd | 453 | 456 | 617 | 768 | 991 |
| Greensville | 498 | 520 | 617 | 909 | 912 |
| Henry | 431 | 518 | 617 | 793 | 913 |
| King George | 708 | 713 | 964 | 1272 | 1504 |
| Lee | 498 | 508 | 617 | 768 | 991 |
| Madison | 553 | 577 | 684 | 1008 | 1011 |
| Middlesex | 508 | 531 | 629 | 927 | 1114 |
| Northumberland | 504 | 508 | 658 | 970 | 973 |
| Orange | 607 | 611 | 827 | 1081 | 1465 |
| Patrick | 498 | 520 | 617 | 790 | 991 |
| Rappahannock | 800 | 835 | 990 | 1453 | 1590 |
| Rockbridge | 469 | 538 | 638 | 795 | 1114 |
| Shenandoah | 431 | 593 | 714 | 972 | 1232 |
| Southampton | 563 | 567 | 748 | 932 | 1000 |
| Westmoreland | 556 | 560 | 709 | 904 | 1139 |
| Wythe | 466 | 469 | 617 | 793 | 1093 |
| Clifton Forge city | 498 | 502 | 617 | 909 | 991 |
| Emporia city | 498 | 520 | 617 | 909 | 912 |
| Galax city | 498 | 520 | 617 | 835 | 1047 |
| Martinsville city | 431 | 518 | 617 | 793 | 913 |
| Staunton city | 461 | 569 | 719 | 948 | 1258 |

WASHINGTON

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Bellingham, WA MSA | 572 | 673 | 885 | 1281 | 1431 | Whatcom |
| Bremerton-Silverdale, WA MSA | 566 | 725 | 951 | 1366 | 1628 | Kitsap |
| Kennewick-Pasco-Richland, WA MSA | 515 | 589 | 754 | 1007 | 1299 | Benton, Franklin |
| Lewiston, ID-WA MSA | 403 | 510 | 659 | 853 | 1167 | Asotin |
| Longview, WA MSA | 426 | 555 | 683 | 1006 | 1210 | Cowlitz |
| Mount Vernon-Anacortes, WA MSA | 607 | 675 | 908 | 1275 | 1279 | Skagit |
| Olympia, WA MSA | 706 | 770 | 943 | 1365 | 1670 | Thurston |
| Portland-Vancouver-Hillsboro, OR-WA MSA | 666 | 774 | 922 | 1359 | 1633 | Clark, Skamania |
| Seattle-Bellevue, WA HMFA | 771 | 913 | 1123 | 1655 | 1989 | King, Snohomish |
| Spokane, WA MSA | 447 | 546 | 739 | 1057 | 1199 | Spokane |
| Tacoma, WA HMFA | 630 | 767 | 999 | 1472 | 1769 | Pierce |
| Wenatchee-East Wenatchee, WA MSA | 481 | 598 | 809 | 1018 | 1433 | Chelan, Douglas |

SCHEDULE B - FY 2014 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 51

WASHINGTON continued

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Yakima, WA MSA | 466 | 568 | 732 | 977 | 1180 | Yakima |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Adams | 415 | 537 | 637 | 889 | 1042 | Clallam | 457 | 558 | 755 | 1084 | 1089 |
| Columbia | 415 | 471 | 637 | 914 | 1042 | Ferry | 462 | 537 | 637 | 938 | 1042 |
| Garfield | 415 | 537 | 637 | 793 | 1036 | Grant | 468 | 499 | 660 | 892 | 1080 |
| Grays Harbor | 457 | 531 | 686 | 979 | 1013 | Island | 565 | 686 | 896 | 1320 | 1381 |
| Jefferson | 538 | 669 | 905 | 1127 | 1603 | Kittitas | 532 | 588 | 795 | 1171 | 1408 |
| Klickitat | 431 | 558 | 661 | 827 | 1021 | Lewis | 465 | 550 | 733 | 963 | 1113 |
| Lincoln | 423 | 480 | 649 | 808 | 867 | Mason | 491 | 609 | 824 | 1115 | 1120 |
| Okanogan | 458 | 511 | 637 | 810 | 1128 | Pacific | 413 | 561 | 695 | 930 | 1088 |
| Pend Oreille | 379 | 471 | 637 | 838 | 1042 | San Juan | 665 | 669 | 853 | 1126 | 1140 |
| Stevens | 468 | 471 | 637 | 890 | 1128 | Wahkiakum | 415 | 471 | 637 | 793 | 1042 |
| Walla Walla | 465 | 527 | 713 | 942 | 1263 | Whitman | 445 | 539 | 705 | 1039 | 1242 |

WEST VIRGINIA

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Boone County, WV HMFA | 423 | 426 | 573 | 714 | 854 | Boone |
| Charleston, WV HMFA | 539 | 605 | 721 | 949 | 1075 | Clay, Kanawha, Lincoln, Putnam |
| Cumberland, MD-WV MSA | 454 | 537 | 637 | 867 | 988 | Mineral |
| Huntington-Ashland, WV-KY-OH MSA | 383 | 523 | 643 | 849 | 1043 | Cabell, Wayne |
| Jefferson County, WV HMFA | 624 | 661 | 894 | 1179 | 1223 | Jefferson |
| Martinsburg, WV HMFA | 488 | 558 | 741 | 957 | 990 | Berkeley, Morgan |
| Morgantown, WV MSA | 607 | 634 | 752 | 1014 | 1025 | Monongalia, Preston |
| Parkersburg-Marietta-Vienna, WV-OH MSA | 436 | 470 | 614 | 824 | 907 | Pleasants, Wirt, Wood |
| Steubenville-Weirton, OH-WV MSA | 432 | 499 | 614 | 823 | 943 | Brooke, Hancock |
| Wheeling, WV-OH MSA | 466 | 493 | 614 | 788 | 821 | Marshall, Ohio |
| Winchester, VA-WV MSA | 569 | 621 | 804 | 1093 | 1365 | Hampshire |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Barbour | 434 | 470 | 636 | 792 | 869 | Braxton | 364 | 424 | 573 | 714 | 789 |
| Calhoun | 448 | 476 | 573 | 714 | 808 | Doddridge | 429 | 432 | 585 | 729 | 841 |
| Fayette | 398 | 443 | 573 | 768 | 795 | Gilmer | 459 | 462 | 586 | 730 | 828 |
| Grant | 509 | 512 | 693 | 863 | 1227 | Greenbrier | 431 | 519 | 615 | 766 | 1016 |
| Hardy | 447 | 450 | 606 | 755 | 855 | Harrison | 580 | 584 | 746 | 966 | 1013 |
| Jackson | 421 | 424 | 573 | 734 | 925 | Lewis | 468 | 471 | 637 | 793 | 851 |
| Logan | 463 | 483 | 573 | 811 | 814 | McDowell | 463 | 483 | 573 | 727 | 808 |
| Marion | 524 | 530 | 649 | 951 | 955 | Mason | 433 | 436 | 573 | 832 | 835 |
| Mercer | 445 | 448 | 573 | 714 | 766 | Mingo | 341 | 481 | 573 | 714 | 940 |
| Monroe | 448 | 483 | 573 | 714 | 808 | Nicholas | 448 | 483 | 573 | 763 | 875 |
| Pendleton | 448 | 483 | 573 | 844 | 847 | Pocahontas | 421 | 424 | 573 | 714 | 808 |
| Raleigh | 502 | 505 | 666 | 829 | 890 | Randolph | 506 | 510 | 636 | 904 | 1107 |

SCHEDULE B - FY 2014 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 52

WEST VIRGINIA continued

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Ritchie | 448 | 483 | 573 | 810 | 813 | Roane | 369 | 483 | 573 | 844 | 847 |
| Summers | 451 | 464 | 577 | 758 | 771 | Taylor | 408 | 481 | 573 | 835 | 838 |
| Tucker | 448 | 483 | 573 | 844 | 953 | Tyler | 448 | 472 | 573 | 714 | 766 |
| Upshur | 440 | 443 | 573 | 769 | 808 | Webster | 448 | 480 | 573 | 714 | 766 |
| Wetzel | 455 | 461 | 581 | 856 | 1029 | Wyoming | 448 | 453 | 573 | 714 | 1015 |

WISCONSIN

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Appleton, WI MSA | 399 | 521 | 670 | 987 | 1045 | Calumet, Outagamie |
| Columbia County, WI HMFA | 487 | 538 | 728 | 1027 | 1094 | Columbia |
| Duluth, MN-WI MSA | 438 | 527 | 692 | 902 | 1005 | Douglas |
| Eau Claire, WI MSA | 497 | 578 | 740 | 1090 | 1129 | Chippewa, Eau Claire |
| Fond du Lac, WI MSA | 408 | 509 | 679 | 867 | 1043 | Fond du Lac |
| Green Bay, WI HMFA | 422 | 514 | 681 | 973 | 999 | Brown, Kewaunee |
| Iowa County, WI HMFA | 522 | 560 | 757 | 980 | 1012 | Iowa |
| Janesville, WI MSA | 459 | 584 | 771 | 972 | 1030 | Rock |
| Kenosha County, WI HMFA | 634 | 756 | 970 | 1409 | 1476 | Kenosha |
| La Crosse, WI-MN MSA | 416 | 520 | 699 | 972 | 1183 | La Crosse |
| Madison, WI HMFA | 620 | 742 | 898 | 1239 | 1380 | Dane |
| Milwaukee-Waukesha-West Allis, WI MSA | 524 | 646 | 812 | 1036 | 1120 | Milwaukee, Ozaukee, Washington, Waukesha |
| Minneapolis-St. Paul-Bloomington, MN-WI MSA | 608 | 756 | 946 | 1332 | 1573 | Pierce, St. Croix |
| Oconto County, WI HMFA | 464 | 514 | 637 | 910 | 913 | Oconto |
| Oshkosh-Neenah, WI MSA | 465 | 503 | 653 | 870 | 1157 | Winnebago |
| Racine, WI MSA | 541 | 545 | 735 | 964 | 982 | Racine |
| Sheboygan, WI MSA | 488 | 579 | 719 | 944 | 972 | Sheboygan |
| Wausau, WI MSA | 477 | 495 | 646 | 912 | 989 | Marathon |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Adams | 404 | 537 | 637 | 863 | 995 | Ashland | 404 | 496 | 637 | 821 | 851 |
| Barron | 399 | 519 | 671 | 838 | 1077 | Bayfield | 385 | 546 | 647 | 902 | 905 |
| Buffalo | 524 | 528 | 714 | 941 | 1024 | Burnett | 404 | 516 | 637 | 939 | 942 |
| Clark | 384 | 471 | 637 | 793 | 851 | Crawford | 468 | 471 | 637 | 798 | 914 |
| Dodge | 439 | 562 | 738 | 941 | 986 | Door | 409 | 564 | 688 | 902 | 919 |
| Dunn | 432 | 495 | 670 | 845 | 895 | Florence | 404 | 483 | 637 | 793 | 881 |
| Forest | 404 | 471 | 637 | 831 | 851 | Grant | 437 | 484 | 637 | 810 | 987 |
| Green | 419 | 488 | 660 | 822 | 897 | Green Lake | 404 | 494 | 637 | 871 | 1128 |
| Iron | 379 | 471 | 637 | 868 | 1128 | Jackson | 403 | 500 | 677 | 843 | 905 |
| Jefferson | 472 | 605 | 794 | 1071 | 1194 | Juneau | 448 | 494 | 652 | 916 | 1155 |
| Lafayette | 404 | 488 | 637 | 867 | 931 | Langlade | 432 | 497 | 637 | 939 | 1128 |
| Lincoln | 404 | 471 | 637 | 939 | 1045 | Manitowoc | 425 | 478 | 637 | 793 | 955 |
| Marinette | 489 | 492 | 637 | 913 | 1050 | Marquette | 410 | 509 | 689 | 858 | 921 |
| Menominee | 423 | 493 | 667 | 831 | 891 | Monroe | 427 | 537 | 717 | 963 | 1087 |
| Oneida | 543 | 567 | 698 | 932 | 1236 | Pepin | 404 | 537 | 637 | 939 | 942 |

SCHEDULE B - FY 2014 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 53

WISCONSIN continued

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Polk | 450 | 560 | 757 | 1005 | 1012 | Portage | 415 | 516 | 693 | 863 | 946 |
| Price | 404 | 471 | 637 | 793 | 972 | Richland | 462 | 524 | 644 | 832 | 1067 |
| Rusk | 468 | 471 | 637 | 845 | 1128 | Sauk | 531 | 588 | 771 | 966 | 1030 |
| Sawyer | 408 | 542 | 643 | 801 | 859 | Shawano | 468 | 471 | 637 | 878 | 1010 |
| Taylor | 379 | 471 | 637 | 793 | 851 | Trempealeau | 412 | 471 | 637 | 851 | 1038 |
| Vernon | 404 | 471 | 637 | 811 | 851 | Vilas | 522 | 526 | 711 | 886 | 1133 |
| Walworth | 541 | 592 | 786 | 1119 | 1146 | Washburn | 456 | 534 | 719 | 946 | 994 |
| Waupaca | 484 | 487 | 652 | 865 | 894 | Waushara | 474 | 477 | 645 | 823 | 862 |
| Wood | 425 | 492 | 637 | 853 | 945 | | | | | | |

WYOMING

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Casper, WY MSA | 503 | 576 | 762 | 1123 | 1334 | Natrona |
| Cheyenne, WY MSA | 513 | 583 | 789 | 1081 | 1268 | Laramie |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Albany | 555 | 578 | 746 | 1068 | 1132 | Big Horn | 468 | 471 | 637 | 892 | 913 |
| Campbell | 681 | 710 | 891 | 1122 | 1191 | Carbon | 501 | 504 | 682 | 912 | 1009 |
| Converse | 468 | 472 | 638 | 940 | 943 | Crook | 487 | 537 | 637 | 939 | 1128 |
| Fremont | 523 | 534 | 722 | 981 | 984 | Goshen | 470 | 473 | 637 | 877 | 880 |
| Hot Springs | 487 | 537 | 637 | 939 | 1128 | Johnson | 487 | 521 | 637 | 939 | 1006 |
| Lincoln | 583 | 629 | 762 | 1123 | 1127 | Niobrara | 488 | 538 | 638 | 893 | 1006 |
| Park | 474 | 524 | 662 | 946 | 1172 | Platte | 487 | 537 | 637 | 890 | 972 |
| Sheridan | 613 | 646 | 802 | 999 | 1420 | Sublette | 735 | 811 | 961 | 1405 | 1410 |
| Sweetwater | 563 | 672 | 909 | 1132 | 1610 | Teton | 691 | 822 | 993 | 1463 | 1514 |
| Uinta | 486 | 489 | 651 | 911 | 1086 | Washakie | 487 | 537 | 637 | 903 | 1086 |
| Weston | 487 | 495 | 637 | 793 | 972 | | | | | | |

GUAM

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Pacific Islands | 800 | 859 | 1049 | 1528 | 1827 | | | | | | |

PUERTO RICO

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Aguadilla-Isabela-San Sebastián, PR MSA | 313 | 326 | 387 | 503 | 527 | Aguada, Aguadilla, Añasco, Isabela, Lares, Moca, Rincón, San Sebastián |
| Arecibo, PR HMFA | 410 | 429 | 508 | 712 | 716 | Arecibo, Camuy, Hatillo |
| Barranquitas-Aibonito-Quebradillas, PR HMFA | 301 | 332 | 394 | 491 | 532 | Aibonito, Barranquitas, Ciales, Maunabo, Orocovis, Quebradillas |
| Caguas, PR HMFA | 385 | 387 | 501 | 738 | 827 | Caguas, Cayey, Cidra, Gurabo, San Lorenzo |

SCHEDULE B - FY 2014 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 54

PUERTO RICO continued

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| Fajardo, PR MSA | 368 | 385 | 456 | 672 | 715 | Ceiba, Fajardo, Luquillo |
| Guayama, PR MSA | 290 | 361 | 488 | 608 | 674 | Arroyo, Guayama, Patillas |
| Mayagüez, PR MSA | 373 | 390 | 462 | 620 | 785 | Hormigueros, Mayagüez |
| Ponce, PR MSA | 326 | 340 | 403 | 594 | 714 | Juana Díaz, Ponce, Villalba |
| San Germán-Cabo Rojo, PR MSA | 313 | 327 | 388 | 556 | 665 | Cabo Rojo, Lajas, Sabana Grande, San Germán |
| San Juan-Guaynabo, PR HMFA | 435 | 468 | 555 | 755 | 907 | Aguas Buenas, Barceloneta, Bayamón, Canóvanas, Carolina, Cataño, Comerío, Corozal, Dorado, Florida, Guaynabo, Humacao, Juncos, Las Piedras, Loíza, Manatí, Morovis, Naguabo, Naranjito, Río Grande, San Juan, Toa Alta, Toa Baja, Trujillo Alto, Vega Alta, Vega Baja, Yabucoa |
| Yauco, PR MSA | 305 | 319 | 378 | 512 | 669 | Guánica, Guayanilla, Peñuelas, Yauco |

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Adjuntas | 296 | 298 | 366 | 481 | 559 | Coamo | 296 | 298 | 366 | 481 | 559 |
| Culebra | 296 | 298 | 366 | 481 | 559 | Jayuya | 296 | 298 | 366 | 481 | 559 |
| Las Marías | 296 | 298 | 366 | 481 | 559 | Maricao | 296 | 298 | 366 | 481 | 559 |
| Salinas | 296 | 298 | 366 | 481 | 559 | Santa Isabel | 296 | 298 | 366 | 481 | 559 |
| Utuado | 296 | 298 | 366 | 481 | 559 | Vieques | 296 | 298 | 366 | 481 | 559 |

VIRGIN ISLANDS

| NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | NONMETROPOLITAN COUNTIES | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| St. Croix | 588 | 612 | 742 | 927 | 1060 | St. John | 668 | 798 | 1027 | 1272 | 1330 |
| St. Thomas | 668 | 798 | 1027 | 1272 | 1330 | | | | | | |

Note1: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom.
Note2: 50th percentile FMRs are indicated by an * before the FMR Area name.
Note3: PHAs participating in the Small Area Demonstration Program and the PHAs serving Dallas, TX using small area FMRs will use the FMRs found on Schedule B Addendum

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07/29/2013

SCHEDULE B Addendum - FY 2014 SMALL AREA FAIR MARKET RENTS FOR DEMONSTRATION PARTICIPANTS

The Housing Authority of the City of Long Beach

| ZIP Codes | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | ZIP Codes | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 90802 | 730 | 890 | 1160 | 1590 | 1780 | 90803 | 940 | 1150 | 1500 | 2060 | 2300 |
| 90804 | 810 | 1000 | 1300 | 1780 | 2000 | 90805 | 760 | 940 | 1220 | 1670 | 1870 |
| 90806 | 740 | 910 | 1180 | 1620 | 1810 | 90807 | 860 | 1050 | 1370 | 1880 | 2100 |
| 90808 | 1010 | 1240 | 1610 | 2210 | 2470 | 90810 | 740 | 910 | 1180 | 1620 | 1810 |
| 90813 | 690 | 840 | 1100 | 1510 | 1690 | 90815 | 1100 | 1340 | 1750 | 2400 | 2690 |
| 90822 | 860 | 1060 | 1380 | 1890 | 2120 | | | | | | |

The Housing Authority of the County of Cook

| ZIP Codes | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | ZIP Codes | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 60004 | 870 | 990 | 1170 | 1490 | 1740 | 60005 | 790 | 890 | 1060 | 1350 | 1580 |
| 60006 | 730 | 830 | 980 | 1250 | 1460 | 60007 | 760 | 870 | 1030 | 1310 | 1530 |
| 60008 | 820 | 940 | 1110 | 1420 | 1650 | 60009 | 730 | 830 | 980 | 1250 | 1460 |
| 60010 | 1070 | 1210 | 1440 | 1840 | 2140 | 60011 | 730 | 830 | 980 | 1250 | 1460 |
| 60016 | 760 | 860 | 1020 | 1300 | 1520 | 60017 | 730 | 830 | 980 | 1250 | 1460 |
| 60018 | 650 | 730 | 870 | 1110 | 1290 | 60022 | 980 | 1110 | 1320 | 1680 | 1960 |
| 60025 | 820 | 940 | 1110 | 1420 | 1650 | 60026 | 970 | 1100 | 1300 | 1660 | 1930 |
| 60029 | 730 | 830 | 980 | 1250 | 1460 | 60043 | 730 | 830 | 980 | 1250 | 1460 |
| 60053 | 850 | 960 | 1140 | 1450 | 1690 | 60056 | 720 | 820 | 970 | 1240 | 1440 |
| 60062 | 920 | 1050 | 1240 | 1580 | 1840 | 60065 | 730 | 830 | 980 | 1250 | 1460 |
| 60067 | 860 | 980 | 1160 | 1480 | 1720 | 60068 | 890 | 1010 | 1200 | 1530 | 1780 |
| 60070 | 760 | 860 | 1020 | 1300 | 1520 | 60074 | 770 | 880 | 1040 | 1330 | 1550 |
| 60076 | 880 | 1000 | 1180 | 1500 | 1750 | 60077 | 810 | 920 | 1090 | 1390 | 1620 |
| 60078 | 730 | 830 | 980 | 1250 | 1460 | 60089 | 970 | 1100 | 1310 | 1670 | 1950 |
| 60090 | 790 | 890 | 1060 | 1350 | 1580 | 60091 | 1090 | 1240 | 1470 | 1870 | 2180 |
| 60093 | 1050 | 1200 | 1420 | 1810 | 2110 | 60103 | 910 | 1040 | 1230 | 1570 | 1830 |
| 60104 | 720 | 820 | 970 | 1240 | 1440 | 60107 | 1090 | 1240 | 1470 | 1870 | 2180 |
| 60120 | 730 | 830 | 980 | 1250 | 1460 | 60130 | 710 | 800 | 950 | 1210 | 1410 |
| 60131 | 620 | 700 | 830 | 1060 | 1230 | 60133 | 770 | 880 | 1040 | 1330 | 1550 |
| 60141 | 730 | 830 | 980 | 1250 | 1460 | 60153 | 730 | 830 | 980 | 1250 | 1460 |
| 60154 | 980 | 1110 | 1320 | 1680 | 1960 | 60155 | 620 | 700 | 830 | 1060 | 1230 |
| 60159 | 730 | 830 | 980 | 1250 | 1460 | 60160 | 650 | 730 | 870 | 1110 | 1290 |
| 60161 | 730 | 830 | 980 | 1250 | 1460 | 60162 | 630 | 720 | 850 | 1080 | 1260 |
| 60163 | 750 | 850 | 1010 | 1290 | 1500 | 60164 | 620 | 710 | 840 | 1070 | 1250 |
| 60165 | 690 | 780 | 930 | 1190 | 1380 | 60168 | 730 | 830 | 980 | 1250 | 1460 |
| 60169 | 790 | 890 | 1060 | 1350 | 1580 | 60171 | 650 | 740 | 880 | 1120 | 1310 |
| 60172 | 790 | 890 | 1060 | 1350 | 1580 | 60173 | 910 | 1040 | 1230 | 1570 | 1830 |
| 60176 | 680 | 780 | 920 | 1170 | 1370 | 60192 | 1090 | 1240 | 1470 | 1870 | 2180 |
| 60193 | 900 | 1020 | 1210 | 1540 | 1800 | 60194 | 910 | 1030 | 1220 | 1560 | 1810 |
| 60195 | 930 | 1050 | 1250 | 1590 | 1860 | 60201 | 940 | 1060 | 1260 | 1610 | 1870 |
| 60202 | 820 | 930 | 1100 | 1400 | 1630 | 60203 | 1080 | 1230 | 1460 | 1860 | 2170 |
| 60204 | 730 | 830 | 980 | 1250 | 1460 | 60301 | 900 | 1020 | 1210 | 1540 | 1800 |

SCHEDULE B Addendum - FY 2014 SMALL AREA FAIR MARKET RENTS FOR DEMONSTRATION PARTICIPANTS

The Housing Authority of the County of Cook continued

| ZIP Codes | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | ZIP Codes | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 60302 | 740 | 840 | 990 | 1260 | 1470 | 60303 | 730 | 830 | 980 | 1250 | 1460 |
| 60304 | 690 | 780 | 930 | 1190 | 1380 | 60305 | 720 | 820 | 970 | 1240 | 1440 |
| 60402 | 680 | 770 | 910 | 1160 | 1350 | 60406 | 620 | 710 | 840 | 1070 | 1250 |
| 60409 | 680 | 770 | 910 | 1160 | 1350 | 60411 | 690 | 780 | 930 | 1190 | 1380 |
| 60412 | 730 | 830 | 980 | 1250 | 1460 | 60415 | 680 | 770 | 910 | 1160 | 1350 |
| 60419 | 790 | 890 | 1060 | 1350 | 1580 | 60422 | 1090 | 1240 | 1470 | 1870 | 2180 |
| 60425 | 710 | 800 | 950 | 1210 | 1410 | 60426 | 740 | 840 | 990 | 1260 | 1470 |
| 60428 | 940 | 1060 | 1260 | 1610 | 1870 | 60429 | 930 | 1050 | 1250 | 1590 | 1860 |
| 60430 | 690 | 780 | 930 | 1190 | 1380 | 60438 | 680 | 770 | 910 | 1160 | 1350 |
| 60439 | 650 | 740 | 880 | 1120 | 1310 | 60443 | 910 | 1030 | 1220 | 1560 | 1810 |
| 60445 | 670 | 760 | 900 | 1150 | 1340 | 60452 | 710 | 800 | 950 | 1210 | 1410 |
| 60453 | 710 | 800 | 950 | 1210 | 1410 | 60454 | 730 | 830 | 980 | 1250 | 1460 |
| 60455 | 650 | 740 | 880 | 1120 | 1310 | 60456 | 480 | 540 | 640 | 820 | 950 |
| 60457 | 660 | 750 | 890 | 1130 | 1320 | 60458 | 720 | 820 | 970 | 1240 | 1440 |
| 60459 | 710 | 810 | 960 | 1220 | 1430 | 60461 | 730 | 830 | 980 | 1250 | 1460 |
| 60462 | 750 | 850 | 1010 | 1290 | 1500 | 60463 | 1090 | 1240 | 1470 | 1870 | 2180 |
| 60464 | 1090 | 1240 | 1470 | 1870 | 2180 | 60465 | 720 | 820 | 970 | 1240 | 1440 |
| 60466 | 710 | 810 | 960 | 1220 | 1430 | 60467 | 1090 | 1240 | 1470 | 1870 | 2180 |
| 60469 | 790 | 900 | 1070 | 1360 | 1590 | 60471 | 770 | 880 | 1040 | 1330 | 1550 |
| 60472 | 650 | 740 | 880 | 1120 | 1310 | 60473 | 1080 | 1230 | 1460 | 1860 | 2170 |
| 60475 | 630 | 720 | 850 | 1080 | 1260 | 60476 | 620 | 710 | 840 | 1070 | 1250 |
| 60477 | 740 | 840 | 1000 | 1270 | 1490 | 60478 | 1090 | 1240 | 1470 | 1870 | 2180 |
| 60480 | 630 | 720 | 850 | 1080 | 1260 | 60482 | 680 | 780 | 920 | 1170 | 1370 |
| 60487 | 850 | 970 | 1150 | 1470 | 1710 | 60499 | 730 | 830 | 980 | 1250 | 1460 |
| 60501 | 680 | 770 | 910 | 1160 | 1350 | 60513 | 760 | 870 | 1030 | 1310 | 1530 |
| 60521 | 870 | 990 | 1170 | 1490 | 1740 | 60525 | 710 | 800 | 950 | 1210 | 1410 |
| 60526 | 770 | 880 | 1040 | 1330 | 1550 | 60527 | 800 | 910 | 1080 | 1380 | 1610 |
| 60534 | 690 | 780 | 930 | 1190 | 1380 | 60546 | 660 | 750 | 890 | 1130 | 1320 |
| 60558 | 730 | 830 | 980 | 1250 | 1460 | 60601 | 1090 | 1240 | 1470 | 1870 | 2180 |
| 60602 | 1090 | 1240 | 1470 | 1870 | 2180 | 60603 | 1090 | 1240 | 1470 | 1870 | 2180 |
| 60604 | 1090 | 1240 | 1470 | 1870 | 2180 | 60605 | 1090 | 1240 | 1470 | 1870 | 2180 |
| 60606 | 1090 | 1240 | 1470 | 1870 | 2180 | 60607 | 1020 | 1160 | 1370 | 1750 | 2040 |
| 60608 | 610 | 690 | 820 | 1050 | 1220 | 60609 | 630 | 720 | 850 | 1080 | 1260 |
| 60610 | 970 | 1100 | 1300 | 1660 | 1930 | 60611 | 1090 | 1240 | 1470 | 1870 | 2180 |
| 60612 | 760 | 860 | 1020 | 1300 | 1520 | 60613 | 850 | 960 | 1140 | 1450 | 1690 |
| 60614 | 960 | 1090 | 1290 | 1640 | 1920 | 60615 | 700 | 790 | 940 | 1200 | 1400 |
| 60616 | 700 | 790 | 940 | 1200 | 1400 | 60617 | 630 | 720 | 850 | 1080 | 1260 |
| 60618 | 760 | 860 | 1020 | 1300 | 1520 | 60619 | 640 | 730 | 860 | 1100 | 1280 |
| 60620 | 680 | 770 | 910 | 1160 | 1350 | 60621 | 670 | 760 | 900 | 1150 | 1340 |
| 60622 | 850 | 970 | 1150 | 1470 | 1710 | 60623 | 620 | 700 | 830 | 1060 | 1230 |
| 60624 | 750 | 850 | 1010 | 1290 | 1500 | 60625 | 720 | 820 | 970 | 1240 | 1440 |
| 60626 | 650 | 740 | 880 | 1120 | 1310 | 60628 | 740 | 840 | 1000 | 1270 | 1490 |

SCHEDULE B Addendum - FY 2014 SMALL AREA FAIR MARKET RENTS FOR DEMONSTRATION PARTICIPANTS

The Housing Authority of the County of Cook continued

| ZIP Codes | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | ZIP Codes | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 60629 | 680 | 780 | 920 | 1170 | 1370 | 60630 | 720 | 820 | 970 | 1240 | 1440 |
| 60631 | 770 | 880 | 1040 | 1330 | 1550 | 60632 | 640 | 730 | 860 | 1100 | 1280 |
| 60633 | 660 | 750 | 890 | 1130 | 1320 | 60634 | 710 | 810 | 960 | 1220 | 1430 |
| 60636 | 720 | 820 | 970 | 1240 | 1440 | 60637 | 700 | 790 | 940 | 1200 | 1400 |
| 60638 | 670 | 760 | 900 | 1150 | 1340 | 60639 | 710 | 810 | 960 | 1220 | 1430 |
| 60640 | 650 | 740 | 880 | 1120 | 1310 | 60641 | 680 | 780 | 920 | 1170 | 1370 |
| 60642 | 840 | 950 | 1130 | 1440 | 1680 | 60643 | 710 | 800 | 950 | 1210 | 1410 |
| 60644 | 670 | 760 | 900 | 1150 | 1340 | 60645 | 740 | 840 | 990 | 1260 | 1470 |
| 60646 | 710 | 810 | 960 | 1220 | 1430 | 60647 | 750 | 850 | 1010 | 1290 | 1500 |
| 60649 | 630 | 720 | 850 | 1080 | 1260 | 60651 | 740 | 840 | 1000 | 1270 | 1490 |
| 60652 | 760 | 870 | 1030 | 1310 | 1530 | 60653 | 580 | 660 | 780 | 990 | 1160 |
| 60654 | 1090 | 1240 | 1470 | 1870 | 2180 | 60655 | 690 | 780 | 930 | 1190 | 1380 |
| 60656 | 770 | 880 | 1040 | 1330 | 1550 | 60657 | 900 | 1020 | 1210 | 1540 | 1800 |
| 60659 | 740 | 840 | 990 | 1260 | 1470 | 60660 | 650 | 730 | 870 | 1110 | 1290 |
| 60661 | 1080 | 1230 | 1460 | 1860 | 2170 | 60666 | 730 | 830 | 980 | 1250 | 1460 |
| 60677 | 730 | 830 | 980 | 1250 | 1460 | 60681 | 730 | 830 | 980 | 1250 | 1460 |
| 60682 | 730 | 830 | 980 | 1250 | 1460 | 60690 | 730 | 830 | 980 | 1250 | 1460 |
| 60693 | 730 | 830 | 980 | 1250 | 1460 | 60694 | 730 | 830 | 980 | 1250 | 1460 |
| 60706 | 670 | 760 | 900 | 1150 | 1340 | 60707 | 680 | 780 | 920 | 1170 | 1370 |
| 60712 | 1090 | 1240 | 1470 | 1870 | 2180 | 60714 | 710 | 810 | 960 | 1220 | 1430 |
| 60803 | 640 | 730 | 860 | 1100 | 1280 | 60804 | 620 | 710 | 840 | 1070 | 1250 |
| 60805 | 760 | 870 | 1030 | 1310 | 1530 | 60827 | 730 | 830 | 980 | 1250 | 1460 |

Town of Mamaroneck Public Housing Agency

| ZIP Codes | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | ZIP Codes | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 10501 | 1210 | 1270 | 1500 | 1950 | 2300 | 10502 | 1700 | 1780 | 2110 | 2740 | 3230 |
| 10503 | 1210 | 1270 | 1500 | 1950 | 2300 | 10504 | 1700 | 1780 | 2110 | 2740 | 3230 |
| 10505 | 1210 | 1270 | 1500 | 1950 | 2300 | 10506 | 1320 | 1380 | 1640 | 2130 | 2510 |
| 10507 | 1410 | 1480 | 1750 | 2280 | 2680 | 10510 | 1530 | 1590 | 1890 | 2460 | 2900 |
| 10511 | 1180 | 1230 | 1460 | 1900 | 2240 | 10514 | 1670 | 1750 | 2070 | 2690 | 3170 |
| 10517 | 1670 | 1750 | 2070 | 2690 | 3170 | 10518 | 1210 | 1270 | 1500 | 1950 | 2300 |
| 10519 | 1210 | 1270 | 1500 | 1950 | 2300 | 10520 | 1170 | 1220 | 1450 | 1890 | 2220 |
| 10522 | 1360 | 1420 | 1680 | 2190 | 2570 | 10523 | 1700 | 1780 | 2110 | 2740 | 3230 |
| 10526 | 1210 | 1270 | 1500 | 1950 | 2300 | 10527 | 1210 | 1270 | 1500 | 1950 | 2300 |
| 10528 | 1700 | 1780 | 2110 | 2740 | 3230 | 10530 | 1380 | 1440 | 1710 | 2220 | 2620 |
| 10532 | 1210 | 1270 | 1500 | 1950 | 2300 | 10533 | 1470 | 1540 | 1820 | 2370 | 2790 |
| 10535 | 1540 | 1610 | 1910 | 2480 | 2930 | 10536 | 1360 | 1420 | 1680 | 2190 | 2570 |
| 10537 | 930 | 970 | 1150 | 1500 | 1760 | 10538 | 1410 | 1480 | 1750 | 2280 | 2680 |
| 10540 | 1210 | 1270 | 1500 | 1950 | 2300 | 10543 | 1470 | 1540 | 1820 | 2370 | 2790 |
| 10546 | 1340 | 1400 | 1660 | 2160 | 2540 | 10547 | 1140 | 1190 | 1410 | 1830 | 2160 |

SCHEDULE B Addendum - FY 2014 SMALL AREA FAIR MARKET RENTS FOR DEMONSTRATION PARTICIPANTS

Town of Mamaroneck Public Housing Agency continued

| ZIP Codes | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | ZIP Codes | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 10548 | 1370 | 1430 | 1690 | 2200 | 2590 | 10549 | 1240 | 1300 | 1540 | 2000 | 2360 |
| 10550 | 1070 | 1110 | 1320 | 1720 | 2020 | 10551 | 1210 | 1270 | 1500 | 1950 | 2300 |
| 10552 | 1110 | 1160 | 1380 | 1790 | 2120 | 10553 | 1200 | 1250 | 1480 | 1920 | 2270 |
| 10560 | 1210 | 1270 | 1500 | 1950 | 2300 | 10562 | 1260 | 1320 | 1560 | 2030 | 2390 |
| 10566 | 1230 | 1280 | 1520 | 1980 | 2330 | 10567 | 1530 | 1600 | 1900 | 2470 | 2910 |
| 10570 | 1490 | 1560 | 1850 | 2410 | 2840 | 10573 | 1360 | 1420 | 1680 | 2190 | 2570 |
| 10576 | 1700 | 1780 | 2110 | 2740 | 3230 | 10577 | 1210 | 1270 | 1500 | 1950 | 2300 |
| 10578 | 1210 | 1270 | 1500 | 1950 | 2300 | 10580 | 1620 | 1690 | 2000 | 2600 | 3070 |
| 10583 | 1700 | 1780 | 2110 | 2740 | 3230 | 10587 | 1210 | 1270 | 1500 | 1950 | 2300 |
| 10588 | 840 | 880 | 1040 | 1350 | 1590 | 10589 | 1210 | 1270 | 1500 | 1950 | 2300 |
| 10590 | 1700 | 1780 | 2110 | 2740 | 3230 | 10591 | 1310 | 1370 | 1620 | 2110 | 2480 |
| 10594 | 1610 | 1680 | 1990 | 2590 | 3050 | 10595 | 1360 | 1420 | 1680 | 2190 | 2570 |
| 10596 | 950 | 1000 | 1180 | 1530 | 1810 | 10597 | 1210 | 1270 | 1500 | 1950 | 2300 |
| 10598 | 1320 | 1380 | 1640 | 2130 | 2510 | 10601 | 1220 | 1270 | 1510 | 1960 | 2310 |
| 10602 | 1210 | 1270 | 1500 | 1950 | 2300 | 10603 | 1350 | 1410 | 1670 | 2170 | 2560 |
| 10604 | 1410 | 1470 | 1740 | 2260 | 2670 | 10605 | 1240 | 1290 | 1530 | 1990 | 2350 |
| 10606 | 1410 | 1480 | 1750 | 2280 | 2680 | 10607 | 1630 | 1700 | 2020 | 2630 | 3100 |
| 10701 | 1070 | 1110 | 1320 | 1720 | 2020 | 10702 | 1210 | 1270 | 1500 | 1950 | 2300 |
| 10703 | 1110 | 1160 | 1370 | 1780 | 2100 | 10704 | 1200 | 1250 | 1480 | 1920 | 2270 |
| 10705 | 1050 | 1100 | 1300 | 1690 | 1990 | 10706 | 1190 | 1240 | 1470 | 1910 | 2250 |
| 10707 | 1390 | 1450 | 1720 | 2240 | 2640 | 10708 | 1400 | 1460 | 1730 | 2250 | 2650 |
| 10709 | 1380 | 1440 | 1710 | 2220 | 2620 | 10710 | 1110 | 1160 | 1370 | 1780 | 2100 |
| 10801 | 1180 | 1230 | 1460 | 1900 | 2240 | 10802 | 1210 | 1270 | 1500 | 1950 | 2300 |
| 10803 | 1250 | 1310 | 1550 | 2020 | 2380 | 10804 | 1490 | 1550 | 1840 | 2390 | 2820 |
| 10805 | 1240 | 1300 | 1540 | 2000 | 2360 | | | | | | |

Chattanooga Housing Authority

| ZIP Codes | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | ZIP Codes | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 37302 | 430 | 520 | 650 | 880 | 1000 | 37308 | 460 | 550 | 690 | 940 | 1060 |
| 37311 | 460 | 550 | 690 | 940 | 1060 | 37315 | 460 | 550 | 690 | 940 | 1060 |
| 37336 | 430 | 510 | 640 | 870 | 980 | 37341 | 610 | 730 | 910 | 1240 | 1390 |
| 37343 | 490 | 590 | 740 | 1010 | 1130 | 37350 | 460 | 550 | 690 | 940 | 1060 |
| 37351 | 520 | 630 | 780 | 1060 | 1200 | 37353 | 450 | 550 | 680 | 920 | 1040 |
| 37363 | 490 | 590 | 740 | 1010 | 1130 | 37373 | 450 | 540 | 670 | 910 | 1030 |
| 37377 | 490 | 590 | 740 | 1010 | 1130 | 37379 | 480 | 580 | 720 | 980 | 1100 |
| 37384 | 460 | 550 | 690 | 940 | 1060 | 37401 | 460 | 550 | 690 | 940 | 1060 |
| 37402 | 430 | 510 | 640 | 870 | 980 | 37403 | 430 | 510 | 640 | 870 | 980 |
| 37404 | 430 | 510 | 640 | 870 | 980 | 37405 | 470 | 570 | 710 | 970 | 1090 |
| 37406 | 430 | 510 | 640 | 870 | 980 | 37407 | 480 | 580 | 720 | 980 | 1100 |
| 37408 | 430 | 510 | 640 | 870 | 980 | 37409 | 450 | 540 | 670 | 910 | 1030 |
| 37410 | 430 | 510 | 640 | 870 | 980 | 37411 | 430 | 510 | 640 | 870 | 980 |
| 37412 | 450 | 550 | 680 | 920 | 1040 | 37414 | 460 | 550 | 690 | 940 | 1060 |

SCHEDULE B Addendum - FY 2014 SMALL AREA FAIR MARKET RENTS FOR DEMONSTRATION PARTICIPANTS

Chattanooga Housing Authority continued

| ZIP Codes | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | ZIP Codes | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 37415 | 450 | 540 | 670 | 910 | 1030 | 37416 | 500 | 600 | 750 | 1020 | 1150 |
| 37419 | 430 | 510 | 640 | 870 | 980 | 37421 | 500 | 600 | 750 | 1020 | 1150 |
| 37422 | 460 | 550 | 690 | 940 | 1060 | 37424 | 460 | 550 | 690 | 940 | 1060 |
| 37450 | 460 | 550 | 690 | 940 | 1060 | | | | | | |

The Housing Authority of the City of Laredo

| ZIP Codes | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | ZIP Codes | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 78040 | 500 | 540 | 680 | 890 | 920 | 78041 | 610 | 660 | 830 | 1090 | 1130 |
| 78043 | 560 | 600 | 760 | 1000 | 1030 | 78045 | 720 | 780 | 980 | 1290 | 1330 |
| 78046 | 550 | 590 | 740 | 970 | 1010 | | | | | | |

SCHEDULE B Addendum - FY 2014 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING WITHIN THE DALLAS, TX HMFA

Collin County

| ZIP Codes | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | ZIP Codes | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 75002 | 770 | 930 | 1170 | 1560 | 1880 | 75009 | 620 | 740 | 940 | 1250 | 1510 |
| 75013 | 780 | 930 | 1180 | 1570 | 1900 | 75023 | 720 | 860 | 1090 | 1450 | 1760 |
| 75024 | 700 | 840 | 1060 | 1410 | 1710 | 75025 | 780 | 930 | 1180 | 1570 | 1900 |
| 75026 | 680 | 810 | 1030 | 1370 | 1660 | 75033 | 630 | 760 | 960 | 1280 | 1550 |
| 75034 | 750 | 890 | 1130 | 1510 | 1820 | 75035 | 890 | 1070 | 1350 | 1800 | 2170 |
| 75048 | 760 | 920 | 1160 | 1550 | 1870 | 75058 | 680 | 810 | 1030 | 1370 | 1660 |
| 75069 | 600 | 720 | 910 | 1210 | 1470 | 75070 | 860 | 1040 | 1310 | 1750 | 2110 |
| 75071 | 630 | 760 | 960 | 1280 | 1550 | 75074 | 650 | 770 | 980 | 1310 | 1580 |
| 75075 | 650 | 780 | 990 | 1320 | 1590 | 75078 | 760 | 910 | 1150 | 1530 | 1850 |
| 75080 | 710 | 850 | 1080 | 1440 | 1740 | 75082 | 750 | 900 | 1140 | 1520 | 1840 |
| 75086 | 680 | 810 | 1030 | 1370 | 1660 | 75093 | 700 | 840 | 1060 | 1410 | 1710 |
| 75094 | 900 | 1080 | 1370 | 1830 | 2210 | 75098 | 750 | 900 | 1140 | 1520 | 1840 |
| 75164 | 570 | 690 | 870 | 1160 | 1400 | 75166 | 900 | 1080 | 1370 | 1830 | 2210 |
| 75173 | 750 | 900 | 1140 | 1520 | 1840 | 75189 | 690 | 820 | 1040 | 1390 | 1680 |
| 75252 | 550 | 660 | 830 | 1110 | 1340 | 75287 | 590 | 700 | 890 | 1190 | 1430 |
| 75370 | 680 | 810 | 1030 | 1370 | 1660 | 75407 | 690 | 820 | 1040 | 1390 | 1680 |
| 75409 | 650 | 770 | 980 | 1310 | 1580 | 75424 | 650 | 770 | 980 | 1310 | 1580 |
| 75442 | 550 | 660 | 840 | 1120 | 1350 | 75452 | 550 | 660 | 830 | 1110 | 1340 |
| 75454 | 750 | 900 | 1140 | 1520 | 1840 | 75491 | 680 | 810 | 1030 | 1370 | 1660 |
| 75495 | 580 | 700 | 880 | 1170 | 1420 | | | | | | |

Dallas County

| ZIP Codes | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | ZIP Codes | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 75001 | 640 | 770 | 970 | 1290 | 1560 | 75006 | 610 | 730 | 920 | 1230 | 1480 |
| 75007 | 670 | 810 | 1020 | 1360 | 1640 | 75011 | 590 | 710 | 900 | 1200 | 1450 |
| 75014 | 590 | 710 | 900 | 1200 | 1450 | 75015 | 590 | 710 | 900 | 1200 | 1450 |
| 75016 | 590 | 710 | 900 | 1200 | 1450 | 75017 | 590 | 710 | 900 | 1200 | 1450 |
| 75019 | 760 | 920 | 1160 | 1550 | 1870 | 75030 | 590 | 710 | 900 | 1200 | 1450 |
| 75038 | 600 | 720 | 910 | 1210 | 1470 | 75039 | 740 | 890 | 1120 | 1490 | 1800 |
| 75040 | 750 | 890 | 1130 | 1510 | 1820 | 75041 | 590 | 710 | 900 | 1200 | 1450 |
| 75042 | 570 | 680 | 860 | 1150 | 1390 | 75043 | 630 | 760 | 960 | 1280 | 1550 |
| 75044 | 690 | 830 | 1050 | 1400 | 1690 | 75045 | 590 | 710 | 900 | 1200 | 1450 |
| 75046 | 590 | 710 | 900 | 1200 | 1450 | 75047 | 590 | 710 | 900 | 1200 | 1450 |
| 75048 | 760 | 920 | 1160 | 1550 | 1870 | 75049 | 590 | 710 | 900 | 1200 | 1450 |
| 75050 | 570 | 680 | 860 | 1150 | 1390 | 75051 | 560 | 670 | 850 | 1130 | 1370 |
| 75052 | 730 | 880 | 1110 | 1480 | 1790 | 75053 | 590 | 710 | 900 | 1200 | 1450 |
| 75060 | 550 | 660 | 840 | 1120 | 1350 | 75061 | 510 | 620 | 780 | 1040 | 1260 |
| 75062 | 570 | 680 | 860 | 1150 | 1390 | 75063 | 690 | 830 | 1050 | 1400 | 1690 |
| 75080 | 710 | 850 | 1080 | 1440 | 1740 | 75081 | 730 | 870 | 1100 | 1470 | 1770 |
| 75082 | 750 | 900 | 1140 | 1520 | 1840 | 75083 | 590 | 710 | 900 | 1200 | 1450 |
| 75085 | 590 | 710 | 900 | 1200 | 1450 | 75088 | 860 | 1040 | 1310 | 1750 | 2110 |
| 75089 | 900 | 1080 | 1370 | 1830 | 2210 | 75104 | 780 | 940 | 1190 | 1590 | 1920 |

SCHEDULE B Addendum - FY 2014 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING WITHIN THE DALLAS, TX HMFA

Dallas County continued

| ZIP Codes | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | ZIP Codes | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 75106 | 590 | 710 | 900 | 1200 | 1450 | 75115 | 620 | 740 | 940 | 1250 | 1510 |
| 75116 | 630 | 760 | 960 | 1280 | 1550 | 75123 | 590 | 710 | 900 | 1200 | 1450 |
| 75134 | 630 | 750 | 950 | 1270 | 1530 | 75137 | 780 | 930 | 1180 | 1570 | 1900 |
| 75138 | 590 | 710 | 900 | 1200 | 1450 | 75141 | 560 | 670 | 850 | 1130 | 1370 |
| 75146 | 610 | 740 | 930 | 1240 | 1500 | 75149 | 670 | 800 | 1010 | 1350 | 1630 |
| 75150 | 630 | 750 | 950 | 1270 | 1530 | 75154 | 750 | 900 | 1140 | 1520 | 1840 |
| 75159 | 620 | 740 | 940 | 1250 | 1510 | 75172 | 490 | 590 | 740 | 990 | 1190 |
| 75180 | 550 | 660 | 840 | 1120 | 1350 | 75181 | 900 | 1080 | 1370 | 1830 | 2210 |
| 75182 | 590 | 710 | 900 | 1200 | 1450 | 75185 | 590 | 710 | 900 | 1200 | 1450 |
| 75187 | 590 | 710 | 900 | 1200 | 1450 | 75201 | 850 | 1020 | 1290 | 1720 | 2080 |
| 75202 | 900 | 1080 | 1370 | 1830 | 2210 | 75203 | 460 | 550 | 690 | 920 | 1110 |
| 75204 | 770 | 930 | 1170 | 1560 | 1880 | 75205 | 750 | 890 | 1130 | 1510 | 1820 |
| 75206 | 620 | 740 | 940 | 1250 | 1510 | 75207 | 600 | 720 | 910 | 1210 | 1470 |
| 75208 | 530 | 630 | 800 | 1070 | 1290 | 75209 | 770 | 930 | 1170 | 1560 | 1880 |
| 75210 | 460 | 550 | 690 | 920 | 1110 | 75211 | 540 | 650 | 820 | 1090 | 1320 |
| 75212 | 520 | 620 | 790 | 1050 | 1270 | 75214 | 560 | 670 | 850 | 1130 | 1370 |
| 75215 | 490 | 590 | 750 | 1000 | 1210 | 75216 | 530 | 630 | 800 | 1070 | 1290 |
| 75217 | 590 | 700 | 890 | 1190 | 1430 | 75218 | 670 | 800 | 1010 | 1350 | 1630 |
| 75219 | 610 | 740 | 930 | 1240 | 1500 | 75220 | 500 | 600 | 760 | 1010 | 1220 |
| 75221 | 590 | 710 | 900 | 1200 | 1450 | 75222 | 590 | 710 | 900 | 1200 | 1450 |
| 75223 | 540 | 650 | 820 | 1090 | 1320 | 75224 | 510 | 610 | 770 | 1030 | 1240 |
| 75225 | 900 | 1080 | 1370 | 1830 | 2210 | 75226 | 720 | 860 | 1090 | 1450 | 1760 |
| 75227 | 550 | 660 | 830 | 1110 | 1340 | 75228 | 480 | 580 | 730 | 970 | 1180 |
| 75229 | 570 | 680 | 860 | 1150 | 1390 | 75230 | 500 | 600 | 760 | 1010 | 1220 |
| 75231 | 480 | 580 | 730 | 970 | 1180 | 75232 | 540 | 650 | 820 | 1090 | 1320 |
| 75233 | 560 | 670 | 850 | 1130 | 1370 | 75234 | 610 | 730 | 920 | 1230 | 1480 |
| 75235 | 590 | 700 | 890 | 1190 | 1430 | 75236 | 570 | 690 | 870 | 1160 | 1400 |
| 75237 | 530 | 640 | 810 | 1080 | 1300 | 75238 | 510 | 620 | 780 | 1040 | 1260 |
| 75240 | 540 | 650 | 820 | 1090 | 1320 | 75241 | 630 | 760 | 960 | 1280 | 1550 |
| 75242 | 590 | 710 | 900 | 1200 | 1450 | 75243 | 530 | 630 | 800 | 1070 | 1290 |
| 75244 | 760 | 910 | 1150 | 1530 | 1850 | 75246 | 460 | 550 | 690 | 920 | 1110 |
| 75247 | 490 | 590 | 750 | 1000 | 1210 | 75248 | 660 | 790 | 1000 | 1330 | 1610 |
| 75249 | 740 | 890 | 1120 | 1490 | 1800 | 75250 | 590 | 710 | 900 | 1200 | 1450 |
| 75251 | 800 | 960 | 1210 | 1610 | 1950 | 75253 | 570 | 690 | 870 | 1160 | 1400 |
| 75254 | 600 | 720 | 910 | 1210 | 1470 | 75313 | 590 | 710 | 900 | 1200 | 1450 |
| 75315 | 590 | 710 | 900 | 1200 | 1450 | 75342 | 590 | 710 | 900 | 1200 | 1450 |
| 75354 | 590 | 710 | 900 | 1200 | 1450 | 75355 | 590 | 710 | 900 | 1200 | 1450 |
| 75356 | 590 | 710 | 900 | 1200 | 1450 | 75360 | 590 | 710 | 900 | 1200 | 1450 |
| 75367 | 590 | 710 | 900 | 1200 | 1450 | 75371 | 590 | 710 | 900 | 1200 | 1450 |
| 75372 | 590 | 710 | 900 | 1200 | 1450 | 75374 | 590 | 710 | 900 | 1200 | 1450 |
| 75378 | 590 | 710 | 900 | 1200 | 1450 | 75379 | 590 | 710 | 900 | 1200 | 1450 |

SCHEDULE B Addendum - FY 2014 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING WITHIN THE DALLAS, TX HMFA

Dallas County continued

| ZIP Codes | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | ZIP Codes | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 75380 | 590 | 710 | 900 | 1200 | 1450 | 75381 | 590 | 710 | 900 | 1200 | 1450 |
| 75382 | 590 | 710 | 900 | 1200 | 1450 | | | | | | |

Delta County

| ZIP Codes | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | ZIP Codes | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 75415 | 550 | 660 | 840 | 1120 | 1350 | 75432 | 530 | 630 | 800 | 1070 | 1290 |
| 75441 | 550 | 660 | 840 | 1120 | 1350 | 75448 | 550 | 660 | 840 | 1120 | 1350 |
| 75450 | 550 | 660 | 840 | 1120 | 1350 | 75469 | 550 | 660 | 840 | 1120 | 1350 |

Denton County

| ZIP Codes | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | ZIP Codes | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 75007 | 670 | 810 | 1020 | 1360 | 1640 | 75009 | 620 | 740 | 940 | 1250 | 1510 |
| 75010 | 760 | 920 | 1160 | 1550 | 1870 | 75022 | 770 | 930 | 1170 | 1560 | 1880 |
| 75027 | 620 | 740 | 940 | 1250 | 1510 | 75028 | 900 | 1080 | 1370 | 1830 | 2210 |
| 75029 | 620 | 740 | 940 | 1250 | 1510 | 75033 | 630 | 760 | 960 | 1280 | 1550 |
| 75033 | 630 | 760 | 960 | 1280 | 1550 | 75034 | 750 | 890 | 1130 | 1510 | 1820 |
| 75056 | 810 | 970 | 1230 | 1640 | 1980 | 75057 | 630 | 750 | 950 | 1270 | 1530 |
| 75065 | 670 | 810 | 1020 | 1360 | 1640 | 75067 | 620 | 740 | 940 | 1250 | 1510 |
| 75068 | 730 | 870 | 1100 | 1470 | 1770 | 75077 | 790 | 950 | 1200 | 1600 | 1930 |
| 75093 | 700 | 840 | 1060 | 1410 | 1710 | 75287 | 590 | 700 | 890 | 1190 | 1430 |
| 76052 | 900 | 1080 | 1370 | 1830 | 2210 | 76177 | 590 | 710 | 900 | 1200 | 1450 |
| 76201 | 470 | 570 | 720 | 960 | 1160 | 76202 | 620 | 740 | 940 | 1250 | 1510 |
| 76205 | 580 | 700 | 880 | 1170 | 1420 | 76206 | 620 | 740 | 940 | 1250 | 1510 |
| 76207 | 570 | 680 | 860 | 1150 | 1390 | 76208 | 630 | 760 | 960 | 1280 | 1550 |
| 76209 | 570 | 690 | 870 | 1160 | 1400 | 76210 | 730 | 880 | 1110 | 1480 | 1790 |
| 76226 | 900 | 1080 | 1370 | 1830 | 2210 | 76227 | 850 | 1020 | 1290 | 1720 | 2080 |
| 76247 | 720 | 860 | 1090 | 1450 | 1760 | 76249 | 760 | 910 | 1150 | 1530 | 1850 |
| 76258 | 580 | 700 | 880 | 1170 | 1420 | 76259 | 640 | 770 | 970 | 1290 | 1560 |
| 76262 | 730 | 870 | 1100 | 1470 | 1770 | 76266 | 640 | 770 | 970 | 1290 | 1560 |
| 76272 | 620 | 740 | 940 | 1250 | 1510 | | | | | | |

Ellis County

| ZIP Codes | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | ZIP Codes | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 75101 | 550 | 660 | 840 | 1120 | 1350 | 75119 | 560 | 670 | 850 | 1130 | 1370 |
| 75125 | 550 | 660 | 840 | 1120 | 1350 | 75152 | 490 | 590 | 750 | 1000 | 1210 |
| 75154 | 750 | 900 | 1140 | 1520 | 1840 | 75165 | 610 | 730 | 920 | 1230 | 1480 |
| 75167 | 760 | 910 | 1150 | 1530 | 1850 | 75168 | 610 | 730 | 920 | 1230 | 1480 |
| 76041 | 610 | 730 | 920 | 1230 | 1480 | 76055 | 610 | 730 | 920 | 1230 | 1480 |
| 76064 | 690 | 830 | 1050 | 1400 | 1690 | 76065 | 630 | 760 | 960 | 1280 | 1550 |
| 76084 | 620 | 740 | 940 | 1250 | 1510 | 76623 | 610 | 730 | 920 | 1230 | 1480 |

SCHEDULE B Addendum - FY 2014 PROPOSED FAIR MARKET RENTS FOR EXISTING HOUSING WITHIN THE DALLAS, TX HMFA

Ellis County continued

| ZIP Codes | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | ZIP Codes | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 76626 | 610 | 730 | 920 | 1230 | 1480 | 76651 | 680 | 810 | 1030 | 1370 | 1660 |
| 76670 | 480 | 580 | 730 | 970 | 1180 | | | | | | |

Hunt County

| ZIP Codes | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | ZIP Codes | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 75135 | 550 | 660 | 840 | 1120 | 1350 | 75160 | 580 | 700 | 880 | 1170 | 1420 |
| 75169 | 500 | 600 | 760 | 1010 | 1220 | 75189 | 690 | 820 | 1040 | 1390 | 1680 |
| 75401 | 500 | 600 | 760 | 1010 | 1220 | 75402 | 520 | 620 | 790 | 1050 | 1270 |
| 75403 | 500 | 600 | 760 | 1010 | 1220 | 75404 | 500 | 600 | 760 | 1010 | 1220 |
| 75422 | 520 | 620 | 790 | 1050 | 1270 | 75423 | 530 | 630 | 800 | 1070 | 1290 |
| 75428 | 400 | 480 | 610 | 810 | 980 | 75442 | 550 | 660 | 840 | 1120 | 1350 |
| 75449 | 410 | 490 | 620 | 830 | 1000 | 75452 | 550 | 660 | 830 | 1110 | 1340 |
| 75453 | 670 | 800 | 1010 | 1350 | 1630 | 75474 | 460 | 550 | 690 | 920 | 1110 |
| 75496 | 390 | 470 | 590 | 790 | 950 | | | | | | |

Kaufman County

| ZIP Codes | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | ZIP Codes | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 75114 | 750 | 890 | 1130 | 1510 | 1820 | 75126 | 900 | 1080 | 1370 | 1830 | 2210 |
| 75142 | 550 | 660 | 830 | 1110 | 1340 | 75143 | 520 | 620 | 790 | 1050 | 1270 |
| 75147 | 510 | 620 | 780 | 1040 | 1260 | 75156 | 580 | 700 | 880 | 1170 | 1420 |
| 75157 | 440 | 530 | 670 | 890 | 1080 | 75158 | 530 | 640 | 810 | 1080 | 1300 |
| 75159 | 620 | 740 | 940 | 1250 | 1510 | 75160 | 580 | 700 | 880 | 1170 | 1420 |
| 75161 | 590 | 700 | 890 | 1190 | 1430 | | | | | | |

Rockwall County

| ZIP Codes | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | ZIP Codes | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 75032 | 840 | 1000 | 1270 | 1690 | 2050 | 75087 | 760 | 920 | 1160 | 1550 | 1870 |
| 75088 | 860 | 1040 | 1310 | 1750 | 2110 | 75089 | 900 | 1080 | 1370 | 1830 | 2210 |
| 75132 | 790 | 950 | 1200 | 1600 | 1930 | 75189 | 690 | 820 | 1040 | 1390 | 1680 |

**Schedule D—FY 2014 Fair Market Rents for Manufactured Home Spaces in the Section 8 Housing Choice Voucher Program**

| State | Area name | Space rent ($) |
|---|---|---|
| California | Orange County, CA HUD Metro FMR Area* | 818 |
| | Riverside-San Bernardino-Ontario, CA MSA* | 532 |
| | Los Angeles-Long Beach, CA HUD Metro FMR Area | 674 |
| | San Diego-Carlsbad-San Marcos, CA MSA | 819 |
| | Santa Rosa-Petaluma, CA MSA | 738 |
| | Vallejo-Fairfield, CA MSA | 594 |
| Colorado | Boulder, CO MSA | 479 |
| Maryland | St. Mary's County | 500 |
| Oregon | Bend, OR MSA | 355 |
| | Salem, OR MSA | 506 |
| Pennsylvania | Adams County | 568 |
| Washington | Olympia, WA MSA | 603 |
| | Seattle-Bellevue, WA HUD Metro FMR Area | 664 |
| West Virginia | Logan County | 453 |
| | McDowell County | 453 |
| | Mercer County | 453 |
| | Mingo County | 453 |
| | Wyoming County | 453 |

*50th percentile FMR areas.

[FR Doc. 2013–18792 Filed 8–2–13; 8:45 am]

BILLING CODE 4210–67–C

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLCA920000.L13100000.PP0000.13X]**

### Notice of Intent to Prepare an Environmental Impact Statement for Oil and Gas Leasing and Development on Public Lands and Federal Mineral Estate and Potentially Amend the Hollister Resource Management Plan, CA

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Intent.

**SUMMARY:** In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the Bureau of Land Management (BLM) intends to prepare an Environmental Impact Statement (EIS) and potential resource management plan (RMP) amendment to evaluate oil and gas leasing and development on public lands and Federal mineral estate in the Hollister Field Office.

**DATES:** This notice initiates the public scoping process for the EIS. Comments on issues may be submitted in writing until October 4, 2013. The date(s) and location(s) of any scoping meetings will be announced at least 15 days in advance through local media, newspapers and the BLM Web site at: *www.blm.gov/ca/eis-og*. In order to be included in the Draft EIS, all comments must be received prior to the close of the 60-day scoping period or 15 days after the last public meeting, whichever is later. We will provide additional opportunities for public participation upon publication of the Draft EIS.

**ADDRESSES:** You may submit comments related to the Oil and Gas Leasing and Development EIS by any of the following methods:

- *Web site: www.blm.gov/ca/eis-og*
- *Email: BLM_CA_OGEIS@blm.gov*
- *Fax:* 916–978–4388
- *Mail:* 2800 Cottage Way, Rm. W–1623, Sacramento, CA 95825

Documents pertinent to this proposal may be examined at the BLM California State Office, 2800 Cottage Way, Sacramento, CA 95825.

**FOR FURTHER INFORMATION CONTACT:** Sara Acridge, Natural Resources Specialist, telephone 916–978–4557; address 2800 Cottage Way, Rm. W–1623, Sacramento, CA 95825; email *BLM_CA_OGEIS@blm.gov*. You may contact Ms. Acridge to have your name added to our mailing list. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** The BLM is initiating a planning process to address oil and gas development on public lands and Federal mineral estate in the Hollister Field Office. This **Federal Register** notice initiates a scoping period to solicit public input on that process. This is the first phase of a process that may lead to the amendment of the Hollister RMP (2006). The BLM may also use this process to consider amending RMPs for other field offices in California with oil and gas leasing and development (Bakersfield, Palm Springs-South Coast, Mother Lode, and Ukiah Field Offices).

The outcome of this effort to prepare an oil and gas leasing and development EIS may provide information for the BLM to potentially amend the Hollister RMP in order to establish additional stipulations, conditions of approval, best management practices, or terms and conditions to further guide safe and responsible lease development practices. The EIS will also analyze various current or reasonably foreseeable well completion and stimulation practices, including hydraulic fracturing and the use of horizontal drilling, in the Hollister Field Office. The EIS will further analyze a potential update to the reasonably foreseeable development scenario.

In addition to this planning effort the BLM is concurrently initiating a separate peer-reviewed, interdisciplinary assessment of the current state of industry practices for well completion and stimulation in California. This assessment of well

completion and stimulation practices will include maps, findings, and synthesized sets of data that will inform the BLM's environmental analysis documents for subsequent oil and gas lease sales. It is anticipated that the information generated by this assessment will be used to inform the planning process.

During the scoping process for this EIS, the high degree of public attention to oil and gas development will provide the BLM with input regarding the suite of oil and gas leasing and development issues and geographic areas that are of most concern to the public. The scoping process will also provide input to assist the BLM in fully developing a range of potential RMP amendment alternatives to address leasing and development and well completion and stimulation practices of concern to the public. In conjunction with the independent science assessment, the BLM will use the results of scoping to refine the geographic scope of the potential plan amendment. In addition, information resulting from the planning and science review will further inform future oil and gas leasing decisions.

The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the process for developing the EIS. Preliminary issues for oil and gas leasing and development to be addressed within the Hollister planning area have been identified by BLM personnel, Federal, State, and local agencies, and other stakeholders, and include: surface water, groundwater, and air quality; greenhouse gases and climate change; the environmental effects of chemicals, if any, used; the potential for induced seismicity; endangered and threatened species; public health and safety; and socioeconomics.

With respect to the potential RMP amendment, preliminary planning criteria include:

- The potential plan amendment will be completed in compliance with FLPMA, NEPA, and all other Federal laws, executive orders, and management policies for the BLM.
- The potential plan amendment will retain the existing resource condition goals and objectives in the Hollister RMP.
- The potential plan amendment will analyze impacts to areas that are currently open to leasing and will not consider opening areas to leasing that are currently closed.
- The potential plan amendment will recognize valid existing rights.

You may submit comments on issues and planning criteria in writing to the BLM at any public scoping meeting, or by using one of the methods listed in the ''ADDRESSES'' section above.

The BLM will follow NEPA public participation requirements to assist the agency in satisfying the public involvement requirements under Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. 470(f)) pursuant to 36 CFR 800.2(d)(3). The information about historic and cultural resources within the area potentially affected by the proposed action will assist the BLM in identifying and evaluating impacts to such resources in the context of both NEPA and Section 106 of the NHPA.

The BLM will consult with Indian tribes on a government-to-government basis in accordance with Executive Order 13175 and other policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be duly considered.

Federal, State, and local agencies, along with tribes and other stakeholders that may be interested in or affected by the proposed action that the BLM is evaluating, are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate in the development of the environmental analysis as a cooperating agency.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Authority:** 40 CFR 1501.7.

**James V. Scrivner,**

*Deputy State Director, Energy and Minerals.*

[FR Doc. 2013–18839 Filed 8–2–13; 8:45 am]

BILLING CODE 4310–40–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLCAD01000 L12200000.AL 0000]**

### Meeting of the California Desert District Advisory Council

**SUMMARY:** Notice is hereby given, in accordance with Public Laws 92–463 and 94–579, that the California Desert District Advisory Council (DAC) to the Bureau of Land Management (BLM), U.S. Department of the Interior, will meet in formal session on Saturday, August 17, 2013, from 1 p.m. to 4:30 p.m. at the Riverside Marriott, 3400 Market Street, Riverside, CA 92501. Pursuant to the Federal Lands Recreation Enhancement Act, the Council will meet to make recommendations on the Imperial Sand Dunes Recreation Area fee proposal.

**SUPPLEMENTARY INFORMATION:** All DAC meetings are open to the public. Council discussion is limited to Bureau of Land Management staff and council members. However, persons who wish to bring recreation fee matters to the attention of the council may file written statements with the council before or after the meeting. A public input session will be provided during the meeting and individuals who wish to address the council will have an opportunity at 2:00 p.m. Comments will be limited to three minutes per person. The council is authorized by the Federal Land Recreation Enhancement Act to make recommendations on BLM recreation fee proposals, which was signed into law by President Bush in December 2004.

Written comments may be filed in advance of the meeting for the California Desert District Advisory Council, c/o Bureau of Land Management, External Affairs, 22835 Calle San Juan de Los Lagos, Moreno Valley, CA 92553. Written comments also are accepted at the time of the meeting and, if copies are provided to the recorder, will be incorporated into the minutes.

**FOR FURTHER INFORMATION CONTACT:** David Briery, BLM California Desert District External Affairs, (951) 697–5220.

Dated: July 24, 2013.

**Timothy Wakefield,**

*Associate District Manager, California Desert District.*

[FR Doc. 2013–18853 Filed 8–2–13; 8:45 am]

BILLING CODE 4310–40–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLCAC01000 L10100000.XZ0000 LXSIOVHD0000]**

### Notice of Public Video Teleconference of the Central California Resource Advisory Council

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with the Federal Land Policy and Management

Act and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Central California Resource Advisory Council (RAC) will meet as indicated below.

**DATES:** A meeting will be held Wednesday, Aug. 21, from 10 a.m. to 1 p.m., by video teleconference to discuss renewable energy projects. Members of the public are welcome to attend.

Time for public comment is reserved from noon to 12:15 p.m. Members of the public can attend at the following locations: BLM Bakersfield Field Office, 3801 Pegasus Drive, Bakersfield; Hollister Field Office, 20 Hamilton Court, Hollister; Bishop Field Office, 351 Pacu Lane, Bishop; Ukiah Field Office, 2550 N. State St., Ukiah; California State Office, 2800 Cottage Way, Sacramento.

**FOR FURTHER INFORMATION CONTACT:** BLM Central California District Manager Este Stifel, (916) 978–4626; or BLM Public Affairs Officer David Christy, (916) 941–3146.

**SUPPLEMENTARY INFORMATION:** The 12-member council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in Central California. At this meeting, agenda topics will include an update on renewable energy projects. Additional ongoing business will be discussed by the council. All meetings are open to the public. Members of the public may present written comments to the council. Each formal council meeting will have time allocated for public comments. Depending on the number of persons wishing to speak, and the time available, the time for individual comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation and other reasonable accommodations, should contact the BLM as provided above.

Dated: July 22, 2013.

**David Christy,**

*Public Affairs Officer.*

[FR Doc. 2013–18852 Filed 8–2–13; 8:45 am]

**BILLING CODE 4310–40–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–NER–NERO–13240; PPNEGATE00/PMP00UP05.YP0000]**

### General Management Plan, Draft Environmental Impact Statement, Gateway National Recreation Area, New Jersey and New York

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of Availability.

**SUMMARY:** Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), the National Park Service (NPS) is releasing a Draft Environmental Impact Statement (DEIS) for the General Management Plan (GMP), Gateway National Recreation Area (Gateway), New York. The draft describes and analyzes several alternatives to guide the management of the site over the next 20 years. The NPS preferred alternative incorporates various management prescriptions to ensure access to and protection and enjoyment of Gateway's resources.

**DATES:** We will accept comments for a period of 60 days following publication of the Environmental Protection Agency's notice of availability in the **Federal Register**. We will announce the dates, times, and locations of public meetings on the DEIS/GMP through the park's Web page (*http://www.nps.gov/gate*) and the NPS Planning, Environment, and Public Comment (PEPC) Web site (*http://www.parkplanning.nps.gov/projectHome.cfm?projectID=16091*) and media outlets.

**ADDRESSES:** Electronic copies of the DEIS/GMP will be available for public review at *http://www.parkplanning.nps.gov/projectHome.cfm?projectID=16091.* A limited number of printed copies will be available upon request by contacting the Superintendent's office.

**FOR FURTHER INFORMATION CONTACT:** Acting Superintendent Suzanne McCarthy, Gateway National Recreation Area, 210 New York Avenue, Staten Island, New York 10305 or telephone at (718) 354–4663.

**SUPPLEMENTARY INFORMATION:** The document describes the no-action alternative and two action alternatives for future management of Gateway, the environment that would be affected by the alternative management actions, and the environmental consequences of implementing the alternatives.

Alternative A is a continuation of current management and trends. The park's enabling legislation and current GMP would continue to guide park management. Gateway would manage park resources and visitor use as it does today, with no major change in direction.

Alternative B is the NPS Preferred Alternative. This alternative provides the widest range of activities and most recreation opportunities in dispersed locations throughout the park. New connections would be forged with park lands and communities adjacent to Gateway and nearby. This alternative offers the most instructional programming and skills development and draws people into the park to increase awareness and enjoyment of Gateway's historic resources and the natural environment. Alternative C provides the most opportunities for independent exploration and experiences that immerse visitors into natural areas, historic sites, and landscapes. This alternative increases the visibility, enjoyment, and protection of coastal resources and highlights preservation efforts as part of interpretation and education activities and promotes hands-on learning and outdoor skills.

Before including your address, phone number, email address, or other personal identifying information in your comment, please be aware that your entire comment -including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: July 31, 2013.

**Gay Vietzke,**

*Acting Regional Director, Northeast Region, National Park Service.*

[FR Doc. 2013–18862 Filed 8–2–13; 8:45 am]

**BILLING CODE 4310–PM–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–889]**

### Certain Wireless Devices, Including Mobile Phones and Tablets 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 June 27, 2013, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Pragmatus Mobile,

LLC of Alexandria, Virginia. A supplement to the complaint was filed on July 16, 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 wireless devices, including mobile phones and tablets by reason of infringement of certain claims of U.S. Patent No. 8,149,124 (''the '124 patent'') and U.S. Patent No. 8,466,795 (''the '795 patent''). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited 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 (2013).

*Scope of Investigation:* Having considered the complaint, the U.S. International Trade Commission, on July 29, 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 wireless devices, including mobile phones and tablets by reason of infringement of one or more of claims 1–5, 7–17, and 19–21 of the '124 patent and claims 1–33 of the '795 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 complainant is:

Pragmatus Mobile, LLC, 601 King Street, Suite 200, Alexandria, VA 22314.

(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:

Pantech Co., Ltd., 1–2, DMC Sangamdon Mapo-gu, Seoul, Republic of Korea;

Pantech Wireless, Inc., 5607 Glenridge Drive, Suite 500, Atlanta, GA 30342.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

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(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.

By order of the Commission.

Issued: July 30, 2013.

**Lisa R. Barton,**

*Acting Secretary to the Commission.*

[FR Doc. 2013–18735 Filed 8–2–13; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Clean Water Act, Emergency Planning and Community Right-to-Know Act, and Oil Pollution Act

Notice is hereby given that on July 31, 2013, a proposed Consent Decree in *United States* v. *Delta Fuels, Inc. and Knight Enterprises, Inc.,* Civil Action No. 3:13–CV–00455, was lodged with the United States District Court for the Northern District of Ohio.

In this action, the United States brought claims against Delta Fuels, Inc. and Knight Enterprises, Inc. (''Defendants'') alleging violations of Sections 311(c) and (j) of the Clean Water Act (''CWA''), 33 U.S.C. 1321(c) and (j); Section 312(a) of the Emergency Planning and Community Right-To-Know Act of 1986 (''EPCRA''), 42 U.S.C. 11022(a); and Section 1002(a) of the Oil Pollution Act, 33 U.S.C. 2702(a). The allegations in the Complaint relate to a November 25, 2005 overflow of approximately 103,000 gallons of gasoline (the ''Spill'') from an aboveground storage tank at a bulk petroleum storage and distribution facility (the ''Facility'') owned by Delta Fuels, Inc. The United States spent approximately $4,354,768 from the Oil Spill Liability Trust Fund responding to the Spill. In the Complaint, the United States sought reimbursement of these response costs as well as a civil penalty for alleged CWA and EPCRA violations.

The proposed Consent Decree resolves all pending claims against Defendants in this action on an ability-to-pay basis. Under the terms of the proposed Consent Decree, Defendants will reimburse the United States $1,747,500 plus interest in four annual installments. Defendants will also pay a civil penalty of $582,500 plus interest in two installments. Finally, Defendants will conduct extensive injunctive relief at the Facility designed to ensure environmental compliance.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Acting Assistant Attorney General, Environment and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S.

Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Delta Fuels, Inc. and Knight Enterprises, Inc.,* Civil Action No. 3:13–CV–00455 (N.D. Ohio), D.J. Ref. No. 90–5–1–1–09158.

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 $14.75 (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. 2013–18812 Filed 8–2–13; 8:45 am]

**BILLING CODE 4410–15–P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[Docket No. 11–69]**

### Tyson D. Quy, M.D.; Decision and Order

On March 26, 2012, Administrative Law Judge (ALJ) Gail A. Randall issued the attached Recommended Decision (hereinafter, cited as R.D.). Neither party filed exceptions to the Recommended Decision.

Having reviewed the record in its entirety, I have decided to adopt the ALJ's rulings, findings of fact, and conclusions of law except as discussed below.[1] While I reject two of the ALJ's conclusions of law, I nonetheless agree with her ultimate conclusions of law.[2] I therefore adopt the ALJ's recommended sanction.

Accordingly, Respondent's application to renew his registration will be granted, subject to the following conditions, which shall remain in effect for a period of three years.

1. Respondent shall be restricted to prescribing controlled substances and shall not administer or dispense any controlled substances. Respondent shall not prescribe controlled substances to himself or any family member. Respondent is further prohibited from obtaining controlled substances from a manufacturer, distributor, or pharmacy, whether the controlled substances are obtained by ordering them from a manufacturer, distributor, or pharmacy, or provided to him by a manufacturer, distributor, or pharmacy as a sample.

Respondent shall not, however, be prohibited from obtaining a prescription for a controlled substance from another practitioner for a legitimate medical condition and filling any such prescription at a pharmacy.

2. Respondent shall comply with all terms and conditions of the Order Accepting Voluntary Submittal to Jurisdiction issued by the Oklahoma State Board of Medical Licensure and Supervision. Any violation of the terms of the aforesaid order shall be grounds for the suspension or revocation of Respondent's DEA Certificate of Registration.

3. Respondent shall notify the nearest DEA field office of any violation of the Order Accepting Voluntary Submittal to Jurisdiction within seventy-two (72) hours of committing any such violation and shall also agree to authorize the Oklahoma State Board of Medical Licensure and Supervision to report any violations on his part of the aforesaid order to the nearest DEA field office.

4. Respondent shall consent to unannounced inspections of his registered location by DEA personnel and waives his right to require agency personnel to obtain an Administrative Inspection Warrant prior to conducting an inspection of his registered location.

### Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 824(a), as well as 28 CFR 0.100(b), I order that the application of Tyson D. Quy, M.D., to

[1] I do not adopt the ALJ's legal conclusion that Respondent's *nolo contendere* plea to the state law offense of driving while under the influence of drugs (DUI), *see* Okla. Stat. tit. 47, § 11–902; constitutes a conviction of an offense under a ''law[] relating to the manufacture, distribution or dispensing of controlled substances.'' R.D. at 20. While DEA has long held that a plea of *nolo contendere* constitutes a conviction even where adjudication is withheld, *see Kimberly Maloney,* 76 FR 60922 (2011) (discussing cases); a DUI conviction, even when it involves the ingestion of a controlled substance, is too attenuated from the acts of manufacture, distribution or dispensing of controlled substances for the underlying offense to be deemed a ''law[] relating to the manufacture, distribution, or dispensing of controlled substances.'' 21 U.S.C. 823(f)(3). *Cf. Jeffery M. Freesemann,* 76 FR 60873, 60887 (2011) (holding that conviction for state law offense of transporting a controlled substance does not relate to the manufacture, distribution or dispensing of controlled substances); *Alvin Darby,* 75 FR 26993, 27000 n.32 (2010) (holding that conviction for offense of simple possession does not relate to the manufacture, distribution, or dispensing of controlled substances); *Super Rite Drugs,* 56 FR 46014, 46015 (1991) (accord). While there is agency precedent to the contrary, *see Jeffery Martin Ford,* 68 FR 10750, 10753 (2003), interpreting this provision as encompassing offenses such as simple possession, DUI, and transportation effectively reads the ''relating to'' phrase out of the statute. However, as has been made clear in other cases, the Agency can consider a DUI offense, when the underlying facts establish that the registrant was under the influence of a controlled substance, under factor five. *Cf. Tony Bui,* 75 FR 49979, 49989 (2010) (''DEA has long held that a practitioner's self-abuse of a controlled substance is a relevant consideration under factor five and has done so even when there is no evidence that the registrant abused his prescription writing authority) (citing *David E. Trawick,* 53 FR 5326, 5327 (1988)).

The ALJ also concluded that Respondent violated the CSA (and state law) when he purchased Xanax ''from an Internet pharmacy and presumably without a legitimate prescription.'' R.D. at 20 (citing 21 U.S.C. 829(e)(1) & Okla. Stat. tit. 63, § 2–309(B)(1)). As for federal law, section 829(e)(1) provides that ''[n]o controlled substance that is a prescription drug . . . may be *delivered, distributed,* or *dispensed* by means of the Internet without a valid prescription.'' 21 U.S.C. 829(e)(1) (emphasis added). However, no evidence was offered that Respondent committed any of the prohibited acts (such as a dispensing by writing a prescription for himself) which are enumerated in the statute. Nor is there any evidence that Respondent purchased the Xanax from a foreign pharmacy, and therefore, imported the drug in violation of federal law. *See* 21 U.S.C. 957. I therefore do not adopt the ALJ's conclusion that he violated section 829(e)(1). Nonetheless, the evidence shows that while Respondent told two different stories as to how he obtained the Xanax, he never claimed that he obtained it pursuant to a valid prescription. Accordingly, his admitted possession of the drug violated federal law. *See* 21 U.S.C. 844(a) (''It shall be unlawful for any person knowingly or intentionally to possess a controlled substance unless such substance was obtained directly, or pursuant to a valid prescription or order, from a practitioner, while acting in the course of his professional practice . . .'').

As for the ALJ's legal conclusion that Respondent violated Oklahoma Stat. tit. 63, § 2–309(B)(l); this provision prohibits only dispensing without a prescription and not the purchasing of a controlled substance. *See id.* (''no controlled dangerous substance included in Schedule III or IV, which is a prescription drug . . . may be dispensed without a written or oral prescription''). Here again, I reject the ALJ's conclusion because there is no evidence that Respondent dispensed the Xanax to himself.

[2] Because there is no evidence that Respondent diverted controlled substances to others and this is a first offense, I conclude that consideration of the Agency's deterrence interests is not warranted. *See Kimberly Maloney,* 76 FR 60922, 60923 (2011).

Finally, with respect to the ALJ's discussion of the amount of time that has elapsed since Respondent's unlawful conduct, *see* R.D. at 21, I have previously expressed my disagreement with the ALJ's apparent view that there is no minimum period of time for which an applicant or registrant must demonstrate his/her sobriety. *See Stephen L. Reitman,* 76 FR 60889, 60890 (2011) (rejecting ALJ's reasoning that ''nine months is not such a short recovery period that it should serve as grounds for revocation'') (other citation omitted). However, in *Reitman,* I noted that additional time had passed since the closing of the record and that no evidence had been presented (through a motion for reconsideration based on newly discovered evidence) that the respondent had relapsed. *Id.* Likewise here, more than two years have now passed since Respondent entered treatment and there is no evidence that he has relapsed. Accordingly, I conclude that Respondent has demonstrated his sobriety for a sufficient period to support continuing his registration, subject to the conditions set forth above.

renew his DEA Certificate of Registration as a practitioner, be, and it hereby is, renewed, subject to the conditions set forth above. This Order is effective immediately.

Dated: July 29, 2013.

**Michele M. Leonhart,**

*Administrator.*

*Theresa Krause, Esq.,* for the Government

*Robert A. Manchester III, Esq.,* for the Respondent

**Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge**

**I. Procedural Background**

Administrative Law Judge Gail A. Randall. The Deputy Assistant Administrator, Drug Enforcement Administration (''DEA'' or ''Government''), issued an Order to Show Cause (''Order'') dated June 30, 2011, proposing to revoke the DEA Certificate of Registration, No. FQ1513818, of Tyson D. Quy, M.D., (''Respondent''), as a practitioner, pursuant to 21 U.S.C. 824(a)(4) (2006), and deny any pending applications for renewal or modification of such registration pursuant to 21 U.S.C. 823(f), because the continued registration of the Respondent would be inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f). [Administrative Law Judge Exhibit (''ALJ Exh.'') 1 at 1].

The Order stated that Respondent is currently registered with the DEA as a practitioner with authority to handle controlled substances in Schedules II–V, and that his registration is scheduled to expire on April 30, 2012. [*Id.*].

The Order alleged that Respondent had been arrested on September 6, 2010 on the charge of driving under the influence and subsequently pled no contest to the criminal charge on February 24, 2011. [*Id.*]. In relation to this charge, the Order asserted that Respondent had admitted he was impaired, that he had tested positive for illegal controlled substances, and finally that he possessed a loaded firearm. [*Id.*].

Next, the Order asserted that Respondent had admitted to the Oklahoma State Board of Medical Licensure and Supervision (''Oklahoma Medical Board'' or ''the Board''), that he had: (a) Stolen Ambien, TussiCaps w/ Hydrocodone, and Butalbital from his father's locked medical supply cabinet and illegally consumed these controlled substances; (b) consumed his grandmother's Xanax tablets which had been left at his home; (c) ''doctor shopped'' to obtain Ambien prescriptions from three different physicians; and (d) illegally purchased sixty 2 milligram dosage units of Xanax over the Internet. [*Id.*].

Lastly, the Order alleged that Respondent intentionally and repeatedly failed to cooperate with investigators from the Board during the Board's investigation. [*Id.* at 2]. And further that on March 10, 2011, the Board suspended Respondent's Oklahoma state medical license for thirty days and placed him on probation for a period of five years. [*Id.*].

The Deputy Assistant Administrator then gave the Respondent the opportunity to show cause as to why his registration should not be revoked on the basis of those allegations. [*Id.*].

On July 29, 2011, Respondent filed a request for a hearing in the above-captioned matter. [ALJ Exh. 2].

After authorized delays, the hearing was conducted on January 10, 2012, in Oklahoma City, Oklahoma. [ALJ Exh. 4]. At the hearing, counsel for the DEA called three witnesses to testify and introduced documentary evidence. [Transcript (''Tr.'') Volume I]. The Respondent also testified and introduced documentary evidence. [*Id.*].

After the hearing, the Government submitted Proposed Findings of Fact, Conclusions of Law and Argument (''Govt. Brief''). The Respondent also submitted Proposed Findings of Fact and Conclusions of Law (''Resp. Brief'').

**II. Issue**

The issue in this proceeding is whether or not the record as a whole establishes by a preponderance of the evidence that the Drug Enforcement Administration should revoke the DEA Certificate of Registration Number FQ1513818, of Tyson Quy, M.D., as a practitioner, pursuant to 21 U.S.C. 824(a) (2006), and deny any pending applications for renewal or modification of such registration, pursuant to 21 U.S.C. 823(f), because his continued registration would be inconsistent with the public interest, as that term is defined in 21 U.S.C. 823(f). [ALJ Exh. 3; Tr. 5–6].

**III. Findings of Fact**

*A. Stipulated Facts*

The parties have stipulated to the following facts:

1. Respondent is registered with the DEA as a practitioner in Schedules II through V under DEA registration number FQ1513818 at 3700 North Kickapoo Street, Suite 124, Shawnee, Oklahoma 74804. The Respondent's registration expires by its terms on April 30, 2012.

2. Alprazolam is a Schedule IV controlled substance pursuant to 21 CFR 1308.14(c)(1).

3. Xanax is a brand of alprazolam, a Schedule IV controlled substance pursuant to 21 CFR 1308.14(c)(1).

4. Ambien is a brand of zolpidem, a Schedule IV controlled substance pursuant to 21 CFR 1308.14(c)(51).

5. Zolpidem is a Schedule IV controlled substance pursuant to 21 CFR 1308.14(c)(51).

6. TussiCaps w/Hydrocodone is a hydrocodone combination product which is a Schedule III controlled substance pursuant to 21 CFR 1308.13(e)(1)(iv).

7. Citalopram is an anti-depressant which is a non-controlled substance.

8. Chlorpheniramine is an anti-histamine which is a non-controlled substance. [ALJ Exh. 3].

*B. Respondent's Addiction History*

Respondent received an undergraduate degree from the University of Oklahoma and then attended medical school at Ross University School of Medicine. [Tr. 90]. He graduated from medical school in May of 2007. [Tr. 133]. Following medical school, Respondent began a three year residency program in family medicine, which he completed in July of 2010. [Tr. 90–91; Govt. Exh. 6].

Residency proved to be an extremely stressful time for Respondent. [Govt. Exh. 6]. He testified that during his residency training, he would routinely work long hours under difficult conditions, including shifts up to thirty hours at a time. [Tr. 145]. As a result, Respondent developed chronic insomnia, for which he sought treatment. [Govt. Exh. 6]. To treat his sleep issues, Respondent's primary care physician prescribed him Ambien, a sleep aid medication and Schedule IV controlled substances. [Tr. 133; Govt. Exh. 6; FOF 4,5]. Dr. Quy credibly testified that he had never taken a controlled substance prior to receiving this prescription. [Tr. 145].

Dr. John Koontz served as Respondent's primary care physician during this period. [Tr. 10–11]. He testified that he treated Respondent as a patient from approximately 2009 to July 22, 2010. [Tr. 11–12]. While Dr. Koontz could not recall how many Ambien prescriptions he issued to Respondent, Respondent's prescription history report and copies of his prescriptions indicate that Dr. Koontz issued at least eight prescriptions for Ambien or its generic equivalent, zolpidem, from approximately August 18, 2009, to July 22, 2010. [Tr. 24; Govt. Exh. 4; Govt. Exh. 2]. Dr. Koontz also approved numerous refill requests on these prescriptions at the request of Dr. Quy. [Govt. Exh. 2; Govt. Exh. 4].

Respondent testified that during this period he developed an addiction to Ambien. [Tr. 145]. To feed his addiction, he primarily obtained Ambien from the prescriptions that Dr. Koontz issued him. [Tr. 129–130]. Dr. Quy also testified that he obtained Ambien from prescriptions written to him by other doctors. [*Id.;* Govt. Exh. 2; Govt. Exh. 4]. While Ambien remained Dr. Quy's primary substance of abuse during this period, he also admitted to obtaining and abusing additional controlled substances. [Tr. 162]. These included alprazolam, which he purchased from the Internet, and butalbital and TussiCaps, both of which he stole from his father's locked prescription samples closet. [Tr. 130–31].

*C. The July 22, 2010 Prescription From Dr. Koontz*

On July 22, 2010, Dr. Koontz issued Respondent a prescription for thirty 10 milligram units of Ambien. [Tr. 13; Govt. Exh. 3]. Shortly after this July 22, 2010 visit, Dr. Koontz obtained Respondent's prescription medical profile report and discovered that Respondent had been seeing other doctors and receiving controlled substances prescriptions from them. [Tr. 24–25]. Respondent did not inform Dr. Koontz that he was seeing other doctors or that he was receiving additional controlled substances prescriptions. [Tr. 16]. After this discovery, Dr. Koontz refused to see Respondent as a patient. [Tr. 12].

Dr. Koontz was shown the July 22, 2010 prescription by a DEA investigator on August 5, 2011. [Tr. 15]. At the hearing, Dr. Koontz testified that the prescription contained a notation for four refills, which Dr. Koontz claimed he did not write. [Tr. 14]. The ''x4'' was not written on the prescription at the place where Dr. Koontz enters refills. [Tr. 15]. I credit Dr. Koontz's testimony that he did not write the refill notation on the prescription. Dr. Koontz, however, did not see Respondent personally on that July 22, 2010 office visit. [Tr. 29]. Instead Dr. Koontz's physician assistant saw Dr. Quy and only had Dr. Koontz sign the prescription. [*Id.*]. Dr. Koontz also could not recall whether he handed the prescription directly to Dr. Quy after he signed it or whether he gave it to his office staff to hand to Respondent. [Tr. 35–36]. In fact, Dr. Koontz visibly struggled at the hearing to recall the events of the July 22, 2010 office visit.

On the other hand, Dr. Quy testified that he did not forge the refill notation, and I find his testimony credible. [Tr. 95]. As a physician, if he would have forged the prescription, he would have placed the refill number at the appropriate place on the prescription for annotating refills. [Tr. 96, 128]. The ''x4'' was not located in the appropriate refill place on the prescription. I also find his account of the visit to Dr. Koontz's office credible. He readily recalled details of the visit, identified the physician's assistant he saw, and proffered a plausible explanation for the refill notation, namely that a member of Dr. Koontz's office staff may have approved these refills to spare a busy resident an additional office visit. [Tr. 137–138; 95; 142–143]. Dr. Quy's testimony was also supported by documentary evidence which confirmed his ready access to refills from Dr. Koontz's office upon request, along with prescriptions that he obtained from other physicians. [Govt. Exh. 2; Govt. Exh. 4]. He had no need to forge refills on the prescription.

In light of the Government's failure to proffer any additional evidence that Dr. Quy was responsible for the refill notation on the prescription, I find that the Government has failed to prove, by a preponderance of the evidence, that Dr. Quy forged the refill notation on the July 22, 2010 prescription.

*D. Respondent's DUI Arrest*

On September 6, 2010, Respondent was scheduled to work a shift beginning at 6:00 a.m. at Purcell Hospital. [Govt. Exh. 5]. When Respondent went to work that morning, other hospital employees observed that he appeared to be in an impaired state. [*Id.*]. These employees reported Respondent to his supervisor, Dr. Berry Winn. [*Id.*]. Dr. Winn instructed Respondent not to see patients and to sleep in a room at the hospital. [*Id.*]. Respondent slept until approximately 12:45 p.m. when he attempted to drive himself home from the hospital. [*Id.*].

While driving home, Respondent was stopped by a Purcell police officer on suspicion of driving under the influence. [*Id.*]. Respondent performed poorly on the field sobriety test and agreed to submit to a drug test at Purcell Hospital. [*Id.*]. During the search of Respondent's car, the officer found Dr. Quy's loaded nine millimeter pistol, along with additional rounds of ammunition and a hunting knife. [*Id.*]. Dr. Quy possesses an active concealed carry license from the state of Oklahoma. [Resp. Exh. 7].

The officer then arrested Respondent for driving under the influence of drugs and for possession of a loaded weapon while under the influence of narcotics. [Govt. Exh. 5]. Dr. Quy's sample tested positive for Ambien, alprazolam, butalbital, chlorpheniramine, and citalopram. [*Id.*]. The next day, September 7, 2010, Respondent was charged with one count of driving under the influence of drugs. [*Id.*]. He was arraigned in the District Court of McClain County, Oklahoma. [*Id.*].

On February 24, 2011, Respondent entered a plea of nolo contendere to the charge. [Govt. Exh. 7; Tr. 55]. The Court sentenced Dr. Quy to six months imprisonment, all of which were deferred, pending his satisfactory completion of the probationary conditions. [Govt. Exh. 7]. Respondent successfully completed his probation by attending a DUI school, paying a fine and court costs, obtaining a substance abuse evaluation, and attending a victims impact panel. [*Id.*]. After Dr. Quy satisfied these probationary conditions, the case was dismissed on August 23, 2011. [Govt. Exh. 7; Tr. 115–116].

*E. Oklahoma Medical Board Investigation*

On September 7, 2010, Steve Washbourne, the Director of Investigations for the Oklahoma Medical Board, received a phone call from Dr. Winn about Respondent. [Tr. 38–39]. Dr. Winn informed Mr. Washbourne that Dr. Quy had reported to work at Purcell Hospital in an impaired state and had been subsequently instructed not to see patients. [Tr. 39]. Dr. Winn provided Mr. Washbourne with Respondent's telephone number. [*Id.*].

That same day, Mr. Washbourne contacted Respondent via telephone. [Tr. 40]. During their conversation Respondent admitted to taking Ambien prior to reporting for his shift at the hospital and that he had been instructed not to see patients that day. [*Id.*]. Respondent further admitted that he had been stopped while driving home from the hospital and had been arrested by a Purcell police officer. [Tr. 40–41]. Mr. Washbourne directed Respondent to contact Dr. Lanny Anderson, the head of the Oklahoma Health Professionals Program (''HPP''), and obtain a substance abuse evaluation. [Tr. 41–42].

On September 8, 2010, Mr. Washbourne conducted an interview with Respondent at the Board's office. [Tr. 43]. I find Mr. Washbourne's testimony consistent with the documentary exhibits and credible. Mr. Washbourne testified that Respondent's demeanor at the meeting was ''a little subdued.'' [Tr. 45]. During this interview, Mr. Washbourne questioned Respondent on the events of September 6, 2010. Dr. Quy told Mr. Washbourne that he had taken three Ambien pills prior to his shift, two on the evening of

September 5, 2010, and one at 2:30 a.m. on the morning of September 6, 2010. [Tr. 43]. Respondent also admitted to taking TussiCaps, butalbital, and Xanax prior to the start of his shift. [Tr. 43–44]. In response to Mr. Washbourne's questioning, Dr. Quy told him, untruthfully, that he had obtained the TussiCaps from samples stored at the offices where he worked and the Xanax from his grandmother. [Tr. 43–44, 60–61, 94]. Dr. Quy also told Mr. Washbourne that he received other controlled substances pursuant to prescriptions written by other physicians. [Tr. 44–45]. Mr. Washbourne then directed Dr. Quy to obtain an assessment from the HPP. [Tr. 45].

*F. Respondent's Inpatient Treatment at Pine Grove*

On September 27, 2010, Dr. Quy went for a three-day evaluation at Pine Grove, which is a comprehensive addiction treatment center located in Hattiesburg, Mississippi. [Resp. Exh. 2]. Following his preliminary evaluation, Respondent entered Pine Grove on October 5, 2010 for an intensive ninety-day addiction treatment program. [*Id.*]. At Pine Grove, Dr. Quy fully participated in a variety of treatment activities, including educational lectures, group and individual therapy, weekly 12-step meetings, specialized programs for impaired professionals, and written assignments. [*Id.*]. And throughout the ninety-day treatment program, Dr. Quy was subject to random urinalysis screening, all of which he passed. [*Id.*].

Respondent's treating physician and clinical therapist prepared a report that detailed his treatment at Pine Grove. [*Id.*]. Although Dr. Quy apparently initially struggled with denial and confusion about his addiction, they acknowledged he ''made steady progress'' during his stay and ultimately ''became forthcoming about his use of chemicals.'' [*Id.*]. They highlighted his positive attitude to and compliance with his treatment plan. [*Id.*]. Lastly, they noted that Dr. Quy's wife was supportive of his treatment and recovery efforts and that she maintained frequent contact with the Pine Grove staff during his stay. [*Id.; see also* Resp. Exh. 8 for evidence of Mrs. Quy's current support].

On December 31, 2010, Pine Grove discharged Respondent after he successfully completed the treatment program. [*Id.,* Resp. Exh. 3]. His discharge diagnosis was sedative/hypnotic dependence. [Resp. Exh. 2]. Pine Grove recommended that Dr. Quy be allowed to return to work as a physician beginning on January 3, 2011, and that he follow the restrictions set forth in his monitoring contract with the Oklahoma Medical Board. [*Id.*].

Dr. Quy credibly testified that he benefitted from his treatment at Pine Grove. [Tr. 102]. Specifically he testified that his treatment at Pine Grove allowed him to recognize and acknowledge his addiction. [Tr. 102]. He further testified that the Pine Grove program taught and reinforced techniques and behaviors to help him manage his addiction. [*Id.*]. Respondent noted that since his treatment at Pine Grove, he has used these tools on a daily basis to address his addiction and continue his recovery. [Tr. 102–03].

*G. Respondent's Post-Treatment Interview With the Medical Board*

Mr. Washbourne conducted a post-treatment interview with Respondent on January 25, 2011. [Tr. 46]. During this interview, Respondent initially maintained that he obtained the TussiCaps and butalbital from his employer and the Xanax from a family member. [Tr. 46–47]. When pressed by Mr. Washbourne, Dr. Quy admitted that he had actually stolen the TussiCaps and butalbital from his father's drug cabinet. [Tr. 47, 49]. And when asked about the Xanax, Respondent gave Mr. Washbourne a blister pack of the medication, which he claimed was left at his house by his grandmother who had visited from Laos. [Tr. 47–48; Govt. Exh. 8]. Mr. Washbourne discovered the manufacture date on the blister pack did not match the information provided by Respondent and asked him about the discrepancy. [Tr. 48]. At that point, Respondent admitted that he had obtained the Xanax by purchasing the blister packs over the internet. [Tr. 48–49]. At the conclusion of the interview, Mr. Washbourne instructed Respondent that the Medical Board would subsequently issue a complaint and citation against him. [Tr. 51].

*H. Medical Board Action Against Respondent*

On January 28, 2011, the Board issued a Complaint and Citation against Respondent. [Govt. Exh. 5]. On March 10, 2011, Respondent voluntarily submitted to the Board's jurisdiction and entered into an Order Accepting Voluntary Submittal to Jurisdiction with the Board. [*Id.*]. This Order found that Dr. Quy had committed several violations of the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act. [*Id.*]. As a result of these violations, the Board suspended Dr. Quy's medical license for thirty days, until April 9, 2011, and placed him on probation for five years. [*Id.*]. The Board ordered, among other probationary conditions, that Dr. Quy sign a contract with the HPP and abide by all terms of that contract. [*Id.*].

Dr. Quy's Oklahoma medical license is currently active and subject to a five year probationary period scheduled to end on April 9, 2016. Currently Respondent's probationary conditions include: (a) Not supervising allied health professionals that require the surveillance of a licensed physician; (b) submitting biological fluid specimens for analysis upon request of the Oklahoma State Board of Medical Licensure and Supervision; (c) not prescribing, administering or dispensing any medications for personal use or for use by a family member; (d) not using any medication except as authorized by his treating physician for a legitimate medical need and informing any treating physician of the Board's Order; (e) not ingesting any substances, including alcohol, which would cause a body fluid sample to test positive for prohibited substances; (f) releasing any and all medical and psychiatric records to the State Board including his treatment records at Pine Grove; (g) abiding by the recommendations of Pine Grove and comply with his postcare contract with Pine Grove; (h) signing a contract with the Health Professionals Recovery Program and abiding by its terms; (i) obtaining individual therapy from a Board approved therapist and providing quarterly reports from his therapist to the Board; (j) obtaining individual treatment from a Board approved psychiatrist and providing quarterly reports from his psychiatrist to the Board; (k) attending four 12-Step meetings per week, including one Health Professionals Recovery Program meeting; (l) promptly notifying the Board of any relapse or arrest or citation for traffic or criminal offenses involving substance abuse; and (m) keeping the Board informed of his current address. [Govt. Exh. 5].

*I. Respondent's Current Situation*

Respondent credibly testified that he has been clean and sober since October 5, 2010. [Tr. 162]. He is currently employed as a family medicine physician with Midwest Physicians in Shawnee, Oklahoma. [Tr. 90]. Dr. Quy possesses an active DEA registration, Number FQ1513818, which was issued on July 13, 2009 and is not scheduled to expire until April 30, 2012. [Govt. Exh. 1; FOF 1]. Without a DEA registration, Respondent testified that he would not be able to have a meaningful medical practice. [Tr. 119–120]. Respondent's current employer, like most hospitals, requires physicians to

maintain full DEA registration privileges. [Tr. 123].

Dr. Quy's state controlled substances registration is likewise active and subject to a probationary period supervised by the Oklahoma Bureau of Narcotics and Dangerous Drugs Control (''OBNDD''). [Tr. 92–93]. Currently OBNDD's probationary conditions include: (a) Dr. Quy must follow the stipulations outlined in the Medical Board's order; (b) he must not physically handle any controlled substances; and (c) that Dr. Quy may only write prescriptions in an office with a supervising physician. [*Id.* at 93]. If Dr. Quy violates his probation, he faces a minumum fine of five thousand dollars and the loss of his state controlled substances registration. [*Id.*].

Respondent is currently in full compliance with the conditions of the Board's order and his probation with the Medical Board. [Tr. 54]. In addition, he is in full compliance with the probationary conditions of OBNDD. [Tr. 82, 92–93]. All of his alcohol and drug screens have tested negative. [Resp. Exh. 1; Resp. Exh. 9; Tr. 54]. Respondent began these drug testing screens on January 5, 2011, three months prior to receiving probation from the Board. [Tr. 66]. Mr. Washbourne testified that the Board and HPP are closely monitoring Dr. Quy's recovery and his continued compliance with the probationary conditions. [Tr. 62–63]. Similarly, Dr. Anderson, the head of the HPP, reported that ''all steps are in place to allow [Dr. Quy] to practice safely and maintain a good recovery plan.'' [Resp. Exh. 4].

## IV. Statement of Law and Discussion

### *A. Position of the Parties*

#### 1. Government's Position

The Government asserts that the appropriate remedy in this matter is revocation of the Respondent's registration. [Govt. Brief at 22]. Specifically in addressing the Section 823(f) public interest factors, the Government argues that all five factors support the revocation of Respondent's registration. [Govt. Brief at 15]. Under the first factor, the Government asserts that the imposition of probationary conditions on Respondent's state licenses, namely his medical license and OBNDD registration, ''weighs against a finding that Dr. Quy's registration is consistent with the public interest.'' [Govt. Brief at 16]. Next the Government cites Respondent's history of violating federal and state law by illegally obtaining and using controlled substances as relevant conduct under factors two and four which supports the revocation of his registration. [Govt. Brief at 17–18]. The Government also notes that the Controlled Substances Act has a ''carefully crafted scheme for regulating the distribution of controlled substances and preventing the diversion of controlled substances into illegitimate uses and drug abuse.'' The Government argues that the Respondent's conduct violated this closed regulatory system. [Govt. Brief at 17].

For factor three, the Government argues that Respondent's DUI arrest and subsequent no contest plea constitutes a relevant conviction under Agency precedent and further supports the requested revocation of his registration. [Govt. Brief at 18–19].

Lastly under factor five, the Government makes several arguments. First the Government cites Dr. Quy's history of abusing controlled substances as relevant conduct that threatens the public health and safety. [Govt. Brief at 19]. Further, the Government asserts that the Respondent ''permitted the drug diversion of controlled substances by illegally purchasing, stealing, and using controlled substances.'' [Govt. Brief at 20]. The Government also argues that Dr. Quy has not accepted responsibility or shown any remorse for his previous unlawful conduct. [Govt. Brief at 21–22]. In conclusion, the Government claims that Dr. Quy's continued registration with the DEA would be inconsistent with the public interest and that his registration should be revoked. [Govt. Brief at 22–23].

#### 2. Respondent's Position

Respondent asserts that the Government has failed to establish that Dr. Quy's continued registration would be inconsistent with the public interest. [Resp. Brief at 8]. While acknowledging Dr. Quy's prior substance abuse problem, Respondent argues that he has taken ''positive steps to address and correct this problem.'' [*Id.*]. These rehabilitative steps include completing ninety days of inpatient substance abuse treatment, and agreeing to an aftercare contract that requires, among other conditions, periodic alcohol and drug screens and weekly participation in support group meetings. [Resp. Brief at 5, 8]. Respondent claims that the DEA has ignored Dr. Quy's substantial efforts at rehabilitation and his demonstrated commitment to fully complying with DEA regulations. [Resp. Brief at 8].

Respondent also argues that the public interest will be safeguarded because Dr. Quy is subject to intensive monitoring and oversight mandated by the Oklahoma licensing authorities. [Resp. Brief at 8]. These authorities, the Oklahoma Medical Board and OBNDD, have continued to permit Dr. Quy to prescribe controlled substances. [Resp. Brief at 7]. And the DEA itself, Respondent notes, is fully aware that Dr. Quy remains in active compliance with his probationary conditions. [Resp. Brief at 4]. Respondent concludes by arguing that the DEA has failed to meet its burden to show that Dr. Quy's continued registration is inconsistent with the public interest. [Resp. Brief at 8–9].

### *B. Statement of Law and Analysis*

Pursuant to 21 U.S.C. 824(a)(4) (2006),[1] the Administrator may revoke a DEA Certificate of Registration if she determines that such registration would be inconsistent with the public interest as determined pursuant to 21 U.S.C 823(f). In determining the public interest, the following factors are considered:

> (1) The recommendation of the appropriate State licensing board or professional disciplinary authority.
>
> (2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.
>
> (3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.
>
> (4) Compliance with applicable State, Federal, or local laws relating to controlled substances.
>
> (5) Such other conduct which may threaten the public health and safety.

21 U.S.C. 823(f) (2006).

These factors are to be considered in the disjunctive; the Administrator may rely on any one or a combination of factors and may give each factor the weight she deems appropriate in determining whether a registration should be revoked. *See Robert A. Leslie, M.D.,* 68 FR 15,227, 15,230 (DEA 2003). Moreover, the Administrator is ''not required to make findings as to all of the factors.'' *Hoxie* v. *DEA,* 419 F.3d 477, 482 (6th Cir. 2005); *see also Morall* v. *DEA,* 412 F.3d 165, 173–74 (D.C. Cir. 2005).

The Government bears the burden of proving that the requirements for revocation are satisfied. 21 CFR 1301.44(e) (2011). Once the Government has met its burden of proof, the burden of proof shifts to the Respondent to show why his continued registration would be consistent with the public's interest. *See Medicine Shoppe—Jonesborough,* 73 FR 364, 380 (DEA 2008). To this point, the Agency has repeatedly held that the ''registrant must accept responsibility for [his] actions

[1] The Administrator has the authority to make such a determination pursuant to 28 CFR 0.100(b) (2011).

and demonstrate that [he] will not engage in future misconduct.'' *Medicine Shoppe—Jonesborough,* 73 FR at 387; *see also Samuel S. Jackson, D.D.S.,* 72 FR 23,848, 23,853 (DEA 2007). In short, after the Government makes its *prima facie* case, the Respondent must prove by a preponderance of the evidence that he can be entrusted with the authority that a registration provides by demonstrating that he accepts responsibility for his misconduct and that the misconduct will not re-occur.

1. Factor One: Recommendation of Appropriate State Licensing Board

Although the recommendation of the applicable state medical board is probative to this factor, the Agency possesses ''a separate oversight responsibility with respect to the handling of controlled substances'' and therefore must make an ''independent determination as to whether the granting of [a registration] would be in the public interest.'' *Mortimer B. Levin, D.O.,* 55 FR 8,209, 8,210 (DEA 1990); *see also Jayam Krishna-Iyer, M.D.,* 74 FR 459, 461 (DEA 2009). The ultimate responsibility to determine whether a registration is consistent with the public interest has been delegated exclusively to the DEA, not to entities within state government. *Edmund Chein, M.D.,* 72 FR 6,580, 6,590 (DEA 2007), *aff'd, Chein* v. *DEA,* 533 F.3d 828 (D.C. Cir. 2008). So while not dispositive, state board recommendations are relevant on the issue of revoking or maintaining a DEA registration. *See Gregory D. Owens, D.D.S.,* 74 FR 36,751, 36,755 (DEA 2009); *Martha Hernandez, M.D.,* 62 FR 61,145, 61,147 (DEA 1997).

In this case, the Oklahoma Medical Board suspended Dr. Quy's medical license for a period of thirty days, from March 10, 2011, to April 9, 2011, and placed him on probation for five years. [Govt. Exh. 5]. At the conclusion of the thirty-day suspension, the Board reinstated Dr. Quy's medical license. Therefore he currently possesses an active Oklahoma medical license, subject to the five year probationary period scheduled to end on April 9, 2016.

The Oklahoma Bureau of Narcotics and Dangerous Drugs Control (''OBNDD''), which issues state controlled substances registrations, also placed Respondent on probation. [Tr. 92–94]. Likewise, Respondent currently possesses an active, in all substances, controlled substances registration in Oklahoma subject to the supervision of the OBNDD. [*Id.*]

Therefore, I find that both the Oklahoma State Medical Board and the OBNDD have allowed Respondent to retain his medical license and state controlled substances registration subject to the Board's and OBNDD's monitoring. Although neither the Board nor OBNDD have made an official recommendation for this proceeding, I find these actions by the Board and OBNDD weigh in favor of continuing the Respondent's registration. *See Vincent J. Scolaro, D.O.* 67 FR 42,060, 42,064 (DEA 2002) (noting that the Agency properly considers ''facts surrounding state licensure'' under this factor). While their recommendations weigh in favor of continuing the Respondent's registration, nevertheless, the Agency has consistently held that a practitioner's possession of State authority, while a prerequisite to maintenance of a registration, is not dispositive of the public interest determination. *Mark De La Lama, P.A.,* 76 FR 20,011, 20,018 (DEA 2011).

2. Factors Two and Four: Applicant's Experience With Controlled Substances and Compliance With Applicable State, Federal, or Local Laws Relating to Controlled Substances

Under the Controlled Substances Act, it is ''unlawful for any person knowingly or intentionally . . . to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge.'' 21 U.S.C. 843(a)(3) (2006); *see also* Okla. Stat. tit. 63, § 2–406(3) (2012) (analagous state law requirement). Additionally, Oklahoma law not only proscribes such conduct by physicians, but also sets forth additional restrictions on the handling and usage of controlled substances by Oklahoma doctors. *See* Okla. Stat. tit. 59, § 509 (2012) (defining ''unprofessional conduct'' under the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act'') ; Okla. Admin. Code § 435:10–7–4 (2010) (enumerating additional conduct covered by the statutory term ''unprofessional conduct''). These restrictions include prohibitions on purchasing and administering controlled substances for the physician's personal use and using habit-forming drugs.[2]

It is undisputed that Respondent violated both the CSA and Oklahoma law by obtaining controlled substances for his own use. Likewise by engaging in ''doctor shopping'' to obtain additional prescriptions for Ambien, Dr. Quy violated federal and state law. 21 U.S.C. 843(a)(3) (2006); Okla. Stat. tit. 63, § 2–406(3) (2012). Additionally by stealing and unlawfully consuming TussiCaps, a schedule III controlled substance, and butalbital from his father's drug cabinet, Dr. Quy committed another serious violation of the CSA and Oklahoma law. 21 U.S.C. 829(b) (2006) (''[N]o controlled substance in schedule III or IV . . . may be dispensed without a written or oral prescription''); Okla. Stat. tit. 63, § 2–309(B)(1) (2012) (analgous state law requirement). Finally, his purchase of Xanax, a schedule IV controlled substance, from an Internet pharmacy and presumably without a legitimate prescription also violated both federal and state law. 21 U.S.C. 829(e)(1) (2006) (''No controlled substance that is a prescription drug . . . may be delivered, distributed, or dispensed by means of the Internet without a valid prescription''); Okla. Stat. tit. 63, § 2–309(B)(1) (2012). Such serious violations of federal and state law, coupled with Dr. Quy's unlawful consumption of controlled substances, weigh in favor of revoking the Respondent's DEA registration. Accordingly, under factors two and four, I find that the Government has met its burden and that grounds do exist for revoking the Respondent's DEA certificate of registration.

3. Factor Three: Applicant's Conviction Record Relating to Controlled Substances

Respondent was charged with one misdemeanor count of driving under the influence of drugs in violation of Okla. Stat. tit. 47, § 11–902 (2012). [Govt. Exh. 7]. Dr. Quy pled no contest to the charge and after succesfully complying with the Court's order, the charge was dismissed. [*Id.*]. After his arrest on this charge, Dr. Quy tested postitive for Ambien, alprazolam, butalbital, chlorpheniramine, and citalopram. [Govt. Exh. 5].

The Agency has held that a nolo contendere plea is sufficient to find that the Respondent's conviction record relating to controlled substances weighs against his continued registration. *Clinton D. Nutt, D.O.,* 55 FR 30,992 (DEA 1990). Also, because the evidence in the record indicates that Respondent had abused controlled substances in the hours prior to this arrest, I find that this incident is relevant to factor three. *But see Mark De La Lama, P.A,* 76 FR

[2] Okla. Stat. tit. 59, § 509(4) (2012) (defining unprofessional conduct to include''[h]abitual intemperance or the habitual use of habit-forming drugs''); Okla. Admin. Code § 435:10–7–4(5) and (26) (2010) (further defining unprofessional conduct to include ''[p]urchasing or prescribing any regulated substance in Schedule I through V, as defined by the Uniform Controlled Dangerous Substances Act, for the physician's personal use'' and ''prescribing, selling, administering, distributing, ordering, or giving any drug legally classified as a controlled substance or recognized as an addictive dangerous drug to a family member or to himself or herself'').

20,011, 20,015 n.11 (DEA 2011) (finding that a DUI arrest was not relevant because there was no evidence that the respondent was under the influence of a controlled substance at the time of the incident). Accordingly, I find that consideration of this factor weighs in favor of revoking the Respondent's DEA certificate of registration.

4. Factor Five: Other Factors Affecting the Public Interest

The Agency has long held that a practitioner's self-abuse of controlled substances constitutes ''conduct which may threaten public health and safety.'' 21 U.S.C. 823(f)(5) (2006); *see also Tony T. Bui, M.D.,* 75 FR 49,979, 49,990 (DEA 2010); *Kenneth Wayne Green, Jr., M.D.,* 59 FR 51,453 (DEA 1994); *David E. Trawick, D.D.S.,* 53 FR 5,326 (DEA 1988). Here, the Respondent self-abused Ambien, alprazolam, butalbital, and TussiCaps. Such unlawful ingestion of controlled substances, especially when a physician is caring for patients while under the influence of these drugs, places the public health and safety in jeopardy. Another significant factor in this case is the fact that the Respondent unlawfully consumed controlled substances prior to reporting for duty at Purcell Hospital. Although this record contains no evidence of any harm coming to his patients, thanks to the actions of the staff at Purcell Hospital, the fact that he was willing to risk such harm is inconsistent with the requirements of a DEA registrant.

But the critical consideration in this proceeding is whether the circumstances that existed during Respondent's addiction to controlled substances have changed sufficiently to support a conclusion that maintaining Respondent's registration would be in the public interest. *See Ellis Turk, M.D.,* 62 FR 19,603, 19,604 (DEA 1997). As this Agency has repeatedly held, a proceeding under the Controlled Substances Act '' 'is a remedial measure, based upon the public interest and the necessity to protect the public from those individuals who have misused . . . their DEA Certificate of Registration, and who have not presented sufficient mitigating evidence to assure the Administrator that they can be entrusted with the responsibility carried by such a registration.' '' *Jon Karl Dively, D.D.S.,* 72 FR 74,332, 74,334 (DEA 2007) (*quoting Samuel S. Jackson, D.D.S.,* 72 FR 23,848, 23,853 (DEA 2007)).

In this case, I found the Respondent credible when he testified that he has been drug free since October 5, 2010. He has remained active in his recovery, complied with all terms of his probation, and his drug screens have all tested negative. As the Deputy Administrator has previously determined, ''[t]he paramount issue is not how much time has elapsed since [the Respondent's] unlawful conduct, but rather, whether during that time [the] Respondent has learned from past mistakes and has demonstrated that he would handle controlled substances properly if entrusted with a DEA registration.'' *Leonardo V. Lopez, M.D.,* 54 FR 36,915 (DEA 1989). Even though it has been previously found that time, alone, is not dispositive in such situations, it is certainly an appropriate factor to be considered. *See Robert G. Hallermeier, M.D.,* 62 FR 26,818 (DEA 1997) (four years); *John Porter Richards, D.O.,* 61 FR 13,878 (DEA 1996) (ten years); *Norman Alpert, M.D.,* 58 FR 67,420, 67,421 (DEA 1993) (seven years).

Here, the conditions of Respondent's probation with the Oklahoma Medical Board require him to remain compliant with the contract he signed with the Oklahoma Health Professionals Program. [Govt. Exh. 5; Resp. Exh. 4]. Additionally during Dr. Quy's five year probationary period, he is subject to supervised random drug screens from both the HPP and the Board, and in the event of a relapse, Respondent must promptly notify the Board. [*Id.*]. As part of his probation conditions, Respondent must attend support group meetings four times a week, receive counseling, abstain from consuming nonprescribed medication, and see a psychiatrist. [Govt. Exh. 5]. Dr. Quy has successfully complied with all of these conditions, including frequently attending support group meetings. [Resp. Exh. 4; Resp. Exh. 5]. The Medical Director of HPP, Dr. Anderson, has affirmed that the Respondent has been compliant with these requirements, and that all of his drug screens have been negative. [Resp. Exh. 9]. This past conduct demonstrates the Respondent's ability to comply with both his probation and his HPP contract and to continue to perform his daily functions drug-free.

After the Government ''has proved that a registrant has committed acts inconsistent with the public interest, a registrant must 'present sufficient mitigating evidence to assure the Administrator that [he] can be entrusted with the responsibility carried by such a registration.' '' *Medicine Shoppe—Jonesborough,* 73 FR 364, 387 (DEA 2008) (*quoting Samuel S. Jackson, D.D.S.,* 72 FR 23,848, 23,853 (DEA 2007). ''Moreover, because 'past performance is the best predictor of future performance,' *Alra Labs., Inc.* v. *DEA,* 54 F.3d 450, 452 (7th Cir. 1995), [DEA] has repeatedly held that where a registrant has committed acts inconsistent with the public interest, the registrant must accept responsibility for [his] actions and demonstrate that [he] will not engage in future misconduct.'' *Medicine Shoppe—Jonesborough,* 73 FR at 387; *see also Samuel S. Jackson, D.D.S.,* 72 FR 23, 848, 23,853 (DEA 2007); *John H. Kennedy, M.D.,* 71 FR 35,705, 35,709 (DEA 2006); *Prince George Daniels, D.D.S.,* 60 FR 62,884, 62,887 (DEA 1995). *See also Hoxie* v. *DEA,* 419 F.3d 477, 483 (6th Cir. 2005) (''admitting fault'' is ''properly consider[ed]'' by DEA to be an ''important factor[]'' in the public interest determination).

Here, I find that the Respondent has taken responsibility for his misconduct. The stark contrast between Respondent's pre-treatment letter to the Medical Board, in which he denied having an addiction and his post-treatment statements and testimony is revealing. [Govt. Exh. 6; Tr. 135]. As is common for addicts, it was only after Dr. Quy underwent the intensive inpatient treatment program at Pine Grove that he was able to recognize and began to address his addiction. [Resp. Exh. 2]. Likewise, at the hearing, he testified credibly and candidly about his addiction and its impact on his family and medical practice. [Tr. 104–105, 111, 145, 148–149, 162]. He demonstrated remorse for his behavior and readily acknowledged the severity of his misconduct. [Tr. 130–131; 136–137; 145–147].

As for the troubling false statements that Dr. Quy made to Mr. Washbourne at the January 25, 2011 interview, I note several mitigating factors. First, Dr. Quy quickly recanted his previous statements when questioned by Mr. Washbourne. [Tr. 61]. Next, Respondent's false statements concerned only the source of the controlled substances he abused, he did not attempt to conceal the fact that he abused these controlled substances. Finally, while those false statements were made at the beginning of Dr. Quy's recovery process, I note that Dr. Quy testified truthfully about the January 25, 2011 interview at the hearing and acknowledged that, although he initially made false statements to Mr. Washbourne, he later ''came clean . . . and (has) been totally forthcoming since then.'' [Tr. 94].

Finally, I find that sufficient requirements are in place to ensure the public interest is protected from the possibility of relapse by the Respondent. Dr. Quy is subject to stringent monitoring by both the Oklahoma Medical Board and by OBNDD until

2016. During his probationary period, any relapse will be detected because of the drug screens and the requirement for the Respondent to disclose any violations of his HPP contract to the Board. Second, the DEA can further restrict his registration to the prescribing of controlled substances only, and to prohibit his prescribing to himself or to any other family member. Lastly, the situation that led to his addiction no longer exists. The Respondent has completed his residency program and has been drug free since October 5, 2010. These factors are also appropriate to consider when determining the appropriate use of the Administrator's discretion in this matter. *See Martha Hernandez, M.D.,* 62 FR 61,145 (DEA 1997) (holding that, in exercising his discretion in determining the appropriate remedy, the Administrator should consider all of the facts and circumstances of a particular case).

**V. Conclusion and Recommendation**

Therefore, I conclude that the DEA has met its burden of proof and has established that grounds exist for revoking the Respondent's DEA registration. I do not condone nor minimize the seriousness of the Respondent's misconduct. However, based on this record, I recommend that the Respondent be afforded an opportunity to demonstrate that he can responsibly handle controlled substance prescriptions by the granting of a restricted registration. *See Cecil E. Oakes, Jr., M.D.,* 63 FR 11,907, 11,910 (DEA 1998) (''Such a resolution will provide Respondent with the opportunity to demonstrate that he can responsibly handle controlled substances, while at the same time protect the public health and safety, by providing a mechanism for rapid detection of any improper activity.'').

Based on this record and the Respondent's actions since December of 2010, I recommend to the Administrator [3] that the Respondent be granted a conditional DEA registration. I suggest that the conditions include: that the registration restricts his handling of controlled substances to merely prescribing and not storing or dispensing such drugs and that he be prohibited from prescribing controlled substances to himself or any family member. Further, I recommend that the Respondent be ordered to continue with his agreement with the Oklahoma HPP and to notify the DEA should a relapse or any positive urinalysis result. I recommend these restrictions apply for three years from the date of the final order so directing this result. In this way, the Respondent may safely continue his return to the full practice of medicine, and the DEA can assure itself of the Respondent's compliance with DEA regulations and of the protection of the public interest.

Dated: March 26, 2012.

**Gail A. Randall,**

*Administrative Law Judge.*

[FR Doc. 2013–18712 Filed 8–2–13; 8:45 am]

**BILLING CODE 4410–09–P**

[3] The Administrator has the authority to make such a determination pursuant to 28 CFR 0.100(b) (2011).

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. OSHA–2009–0022]**

### Requirements for the OSHA Training Institute Education Centers Program and the OSHA Outreach Training Program; Requesting the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

**AGENCY:** Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

**ACTION:** Request for public comments.

**SUMMARY:** OSHA solicits comments concerning its proposal to obtain OMB approval of the information collection requirements contained in the OSHA Training Institute Education Centers Program and the OSHA Outreach Training Program.

**DATES:** Comments must be submitted (postmarked, sent, or received) by October 4, 2013.

**ADDRESSES:** *Electronically:* You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

*Facsimile:* If your comments, including attachments, are not longer than ten (10) pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

*Mail, hand delivery, express mail, messenger, or courier service:* When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2009–0022, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

*Instructions:* All submissions must include the Agency name and OSHA docket number for the Information Collection Request (ICR) (OSHA–2009–0022). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

*Docket:* To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may contact Jim Barnes, Director, Office of Training and Educational Programs, or Kimberly Mason, OSHA Training Institute Education Centers Program at the address below to obtain a copy of the ICR.

**FOR FURTHER INFORMATION CONTACT:** Jim Barnes, Director, Office of Training and Educational Programs, or Kimberly Mason, OSHA Training Institute Education Centers Program, Directorate of Training and Education, OSHA, U.S. Department of Labor, 2020 S Arlington Heights Rd., Arlington Heights, IL. 60005–4102; Phone: (847) 759–7781.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)).

This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. Consistent with the

authority of Section 21 of the OSH Act, the Agency created two educational programs, the OSHA Training Institute (OTI) Education Centers Program and the OSHA Outreach Training Program (Outreach).

To be a participant in the OTI Education Centers Programs or the Outreach Training Program, an individual/organization must provide the Agency with certain information. The requested information is necessary to evaluate the applicant organization and to implement, oversee, and monitor the OTI Education Centers and Outreach Training Programs, courses and trainers. The 11 collection of information requirements are listed below.

A. Application to become an OSHA Training Institute Education Center (OTI Education Center);

B. OTI Education Centers Monthly Summary Report for the OTI Education Centers and the Outreach Training Program Monthly Summary Report;

C. Statement of Compliance With Outreach Training Program Requirements;

D. Outreach Training Program Report Forms (includes Construction, General Industry, Maritime, and Disaster Site);

E. Online Outreach Training Program Report;

F. Active Trainer List;

G. OSHA Training Institute Student Survey (OSHA Form 49 11–05 Edition) (OMB 1225–0059) (Attachment I, OSHA Form 49 11–05 Edition).

H. Attendance Documentation for OTI Education Centers;

I. Outreach Online Training Certification Statement

J. Instructor and Staff Resumes (this include anyone who may be assigned to conduct OSHA classes, contractor, subcontractor, employee, adjunct professor, etc.;

K. Course Material upon Request by OSHA from OTI Education Centers;

## II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

## III. Proposed Actions

OSHA is requesting a 4,059 hour burden hour adjustment increase as a result of increasing the number of courses offered, the number of students attending these two educational programs; and, in turn, the information OSHA needs to adequately monitor the programs. OSHA has identified a set of collections of information necessary for operating the Agency's two education programs, the OSHA Training Institute (OTI) Education Centers Program and OSHA Outreach Training Program. The OTI Education Centers are non-profit organizations that provide training at their location. The Outreach Training Program trains individuals who become authorized to train other individuals. The trainers determine when and where training sessions will be held.

The Agency will summarize comments submitted in response to this notice and will include this summary in the request to OMB.

*Type of Review:* Extension of a previously approved collection.

*Title:* OSHA Training Institute (OTI) Education Centers Program, and OSHA Outreach Training Program Data Collection

*OMB Control Number:* 1218–0262.

*Affected Public:* Business or other for-profits; not-for-profit institutions; Federal government; State, local and tribal governments.

*Number of Respondents:* 385.

*Frequency:* On occasion.

*Total Responses:* 48,329.

*Average Time per Response:* Ranges from 5 minutes for OTI Education Centers to provide a list of outreach trainers to OSHA to 60 hours for a not-for-profit institution to prepare and submit an application to become an OTI Education Center.

*Estimated Total: Burden hours:* 14,292.

*Estimated Cost (Operation and Maintenance):* $0.

## IV. Public Participation—Submission of Comments on this Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2009–0022). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, TTY (877) 889–5627.

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (e.g., copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

## V. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on July 31, 2013.

**David Michaels,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2013–18807 Filed 8–2–13; 8:45 am]

**BILLING CODE 4510–26–P**

## LIBRARY OF CONGRESS

### U.S. Copyright Office

**[Docket No. 2011–3 CRB]**

### Scope of the Copyright Royalty Judges Authority to Adopt Confidentiality Requirements upon Copyright Owners within a Voluntarily Negotiated License Agreement

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

**ACTION:** Final Order.

**SUMMARY:** The Copyright Royalty Judges, acting pursuant to 17 U.S.C. 802(f)(1)(B), referred a novel material question of substantive law to the Register of Copyrights concerning the Copyright Royalty Judges' authority to adopt regulations imposing a duty of confidentiality upon copyright owners, whether or not that duty is included in a voluntarily negotiated license agreement between copyright owners and licensees in a proceeding under section 115 of the Act. The Register of Copyrights responded in a timely fashion by delivering a Memorandum Opinion to the Copyright Royalty Board on July 25, 2013.

**DATES:** Effective Date: July 25, 2013.

**FOR FURTHER INFORMATION CONTACT:** Stephen Ruwe, Attorney Advisor, Copyright GC/I&R, P.O. Box 70400, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

**SUPPLEMENTARY INFORMATION:** In the Copyright Royalty and Distribution Reform Act of 2004, Congress amended Title 17 to replace the Copyright Arbitration Royalty Panel (''CARP'') with the Copyright Royalty Judges (''CRJs''). One of the functions of the CRJs is to make determinations and adjustments of reasonable terms and rates of royalty payments as provided in sections 112(e), 114, 115, 116, 118, 119, and 1004 of the Copyright Act. The CRJs have the authority to request from the Register of Copyrights (''Register'') an interpretation of any novel material question of substantive law that relates to the construction of provisions of Title 17 and arises out the course of the proceeding before the CRJs. *See* 17 U.S.C. 802(f)(1)(B).

On June 25, 2013, the CRJs delivered to the Register: (1) an Order referring a novel material question of substantive law; and (2) a brief filed with the CRJs by Settling Participants (identified below in the Register's Memorandum Opinion). The CRJs' delivery of the request for an interpretation triggered the 30–day response period prescribed in section 802 of the Copyright Act. This statutory provision states that the Register ''shall transmit his or her decision to the Copyright Royalty Judges a written response within 30 days after the Register receives of all briefs or comments from the participants.'' *See* 17 U.S.C. 802(f)(1)(B). The statute also states that ''[i]f such a decision is timely delivered to the Copyright Royalty Judges, the Copyright Royalty Judges shall apply the legal determinations embodied in the decision of the Register of Copyrights in resolving material questions of substantive law.'' *Id.* On July 25, 2013 the Register responded in a Memorandum Opinion to the CRJs that addressed the novel questions of law. To provide the public with notice of the decision rendered by the Register, the Memorandum Opinion is reproduced in its entirety, below.

Dated: July 29, 2013.

**Maria A. Pallante,**

*Register of Copyrights.*

**Before the U.S. Copyright Office Library of Congress Washington, DC 20559**

In the Matter of *Mechanical and Digital Phonorecord* Delivery Rate Adjustment Proceeding
Docket No. 2011–3 CRB (Phonorecords II)

### Memorandum Opinion on a Novel Question of Law

### I. Procedural Background

On May 17, 2012, the Copyright Royalty Judges (''CRJs'') published for comment in the **Federal Register** proposed regulations for the section 115 compulsory license, which were the result of a settlement submitted to the CRJs on April 11, 2012. Notice of Proposed Rulemaking, Mechanical and Digital Phonorecord Delivery Compulsory License, Docket No. 2011–3 CRB Phonorecords II, 77 FR 29259 (May 17, 2012). The proposed regulations included ''confidentiality requirements'' in 37 CFR 385.12(f) and 385.22(e), which would require copyright owners to maintain in confidence statements of account that they receive under the license. *Id.*

The ''confidentiality requirements'' proposed for sections 385.12(f) and 385.22(e) state:

> Confidentiality. A licensee's statements of account, including any and all information provided by a licensee with respect to the computation of a subminimum, shall be maintained in confidence by any copyright owner, authorized representative or agent that receives it, and shall solely be used by the copyright owner, authorized representative or agent for purposes of reviewing the amounts paid by the licensee and verifying the accuracy of any such payments, and only those employees of the copyright owner, authorized representative or agent who need to have access to such information for such purposes will be given access to such information; provided that in no event shall access be granted to any individual who, on behalf of a record company, is directly involved in negotiating or approving royalty rates in transactions authorizing third party services to undertake licensed activity with respect to sound recordings. A licensee's statements of account, including any and all information provided by a licensee with respect to the computation of a subminimum, shall not be used for any other purpose, and shall not be disclosed to or used by or for any record company affiliate or any third party, including any third-party record company.

*Id.* at 29262.

After considering both the Proposed Settlement regulations and the public comments received in response to them, on March 27, 2013, Chief Copyright Royalty Judge Suzanne Barnett proposed two material questions of substantive law for referral to the Register and invited participants to submit briefs to accompany the referral of questions to the Register of Copyrights, pursuant to 17 U.S.C. 802(f)(1)(A)(ii). The referral asked whether the confidentiality requirements proposed for §§ 385.12(f) and 385.22(e) encroach upon the exclusive statutory domain of the Register under section 115 of the Act. CRJ Order Referring Material Question of Substantive Law, Docket No. 2011–3 CRB (Mar. 27, 2013).[1] After receiving a single brief filed jointly by the Settling Participants[2] regarding whether proposed terms encroach upon the exclusive statutory domain of the Register, the Chief Copyright Royalty Judge delivered the referred questions and the Settling Participants brief to the Register on April 17, 2013.

Pursuant to 17 U.S.C. 802(f)(1)(A)(ii), the Register issued a timely reply clarifying that the proposed terms do not encroach upon the Register's authority with respect to statements of account as provided in 17 U.S.C. 115(c)(5). Memorandum Opinion on Material Questions of Substantive Law, Docket No. 2011–3 CRB (May 1, 2013). However, the Register also noted that it is unclear whether the CRJs have any

[1] The CRJ Order Referring Material Question of Substantive Law also referred a question and participants' views regarding detail requirements, which are not at issue in this referral of a novel question of law.

[2] The National Music Publishers' Association, Inc., the Songwriters Guild of America, the Nashville Songwriters Association International, the Church Music Publishers Association, the Recording Industry Association of America, Inc., the Digital Media Association, CTIA—The Wireless Association, Google, Inc., RealNetworks, Inc., Rhapsody International Inc., Cricket Communications, Inc., and Rdio, Inc.

independent authority to issue regulations such as the proposed ''confidentiality requirement'' which would impose obligations on a copyright owner with regard to what he or she is able to do with a statement of account received by a licensee. The Register suggested that the question of whether the CRJs have authority to issue regulations imposing requirements on what a *copyright owner* (as opposed to a nonexclusive licensee) may do or not do with information in a statement of account after that statement has been prepared and served in accordance with the Office's regulations represents a novel question of law that may be separately referred to the Register. *Id.*

Pursuant to 17 U.S.C. 802(f)(l)(B), on May 17, 2013 the Chief Copyright Royalty Judge issued an order to the proceeding participants regarding referral of a novel material question and set forth a schedule governing receipt of comments by the participants in the proceeding. On June 7, 2013, the Settling Participants filed the only comment in response to the order. On June 25, 2013, Chief Judge Barnett delivered the following novel material question to the Register, along with the sole comment filed by the Settling Participants:

> Do the Judges have the statutory authority to adopt regulations imposing a duty of confidentiality upon copyright owners, whether or not that duty is included in a voluntarily negotiated license agreement between copyright owners and licensees in a proceeding under section 115 of the Act?

CRJ Order Referring Novel Question of Law and Setting Briefing Schedule, Docket No. 2011–3 CRB (May 17, 2013).

**II. Summary of Parties' Arguments**

In the sole brief submitted in relation to the referred novel material question to the Register, the Settling Participants assert that it is clear that the CRJs have the authority to issue the confidentiality provisions. In support of this position, the Settling Participants point to three distinct but overlapping statutory grants to the CRJs, namely the authority to: (i) Adopt settlements; (ii) determine terms; and (iii) establish notice and recordkeeping requirements. The Settling Participants claim that each of these grants of authority provides an independent basis for adoption of the confidentiality provisions by the Judges. Brief of Settling Participants, Docket No. 2011–3 CRB Phonorecords II (June 7, 2013) at 6–17.

The Settling Participants point out that analogous statutory provisions grant authority relative to the section 114 statutory license, and that based on such grants the Register, the Librarian of Congress and the CRJs have routinely adopted section 114 confidentiality provisions that are equivalent to the instant confidentiality provisions. The Settling Participants posit that the confidentiality provisions at issue here are like confidentiality provisions adopted pursuant to the section 114 license and that the only thing that distinguishes section 115 from section 114 in this regard is the grant of certain exclusive authority to the Register with respect to statements of account under section 115. They assert that because the Register has determined that the CRJs' adoption of the confidentiality provisions does not encroach on the Register's power with respect to statements of account as provided in section 115(c)(5), there is no question that the statutory language granting authority to the CRJs is sufficient to empower them to adopt the confidentiality provisions. *Id.* at 6–7.

The Settling Participants assert that the CRJs have both the authority and the obligation to adopt settlements among some or all of the participants in a proceeding unless the agreement is contrary to law or a participant in the proceeding objects and the CRJs conclude that the settlement ''does not provide a reasonable basis for setting statutory terms or rates.'' *Id.* at 7, citing 17 U.S.C. 801(b)(7)(A). They state that Congress' clear goal was to streamline the adoption of settlements. They point to legislative history as support for the proposition that Congress intended the CRJs to facilitate and encourage settlement agreements. *Id.* at 7–8, citing H.R. Rep. No. 108–408, at 24 and 30 (2002). They add that in adopting previous settlements the CRJs have acknowledged this obligation, stating ''we are mandated to adopt the determination of the settling parties to a distribution and rate proceeding'' *Id.* at 8, citing 74 FR 4510, 4514 (Jan. 26, 2009). The Settling Participants also note that the Register has confirmed that section 801(b)(7)(A) generally directs the CRJs to adopt settlements, except to the extent that a participant in the proceeding objects to the settlement or where the settlement agreement includes provisions that are contrary to the provisions of the applicable license(s) or otherwise contrary to statutory law. *Id.* at 8–9, citing 74 FR 4537, 4540 (Jan. 26, 2009).

The Settling Participants point out that the only suggestion that anyone has made that the settlement is contrary to law concerned the question of whether there was an encroachment of the Register's authority with respect to statements of account, and, in that case, the Register determined that there was no such encroachment. *Id.,* citing 78 FR 28,773 (May 16, 2013). The Settling Participants assert that nothing in the statutory text, its legislative history, or any binding precedent, suggests that the CRJs' authority—and duty—to adopt settlements has any exception for provisions that impose obligations on copyright owners. They also point toward settlements under the section 114 license that impose confidentiality requirements, which have never been challenged by the Register. *Id.* at 9–10.

The Settling Participants state that the grant of authority to determine reasonable terms of royalty payments permits the CRJs to adopt the confidentiality provisions as terms and make them binding on copyright owners. They point out that the statute expressly states that ''[t]he schedule of reasonable rates and terms determined by the Copyright Royalty Judges shall . . . be binding *on all copyright owners of nondramatic musical works* and persons entitled to obtain a compulsory license.'' 17 U.S.C. 115(c)(3)(D) (emphasis added).

The Settling Participants point to the DC Circuit's finding that analogous language in section 114 was sufficient to justify imposing audit terms on agents of copyright owners. *Id.* at 11, citing *Recording Indus. Ass'n of Am., Inc.* v. *Librarian of Congress,* 176 F.3d 528, 535 (DC Cir. 1999). They also refer to the legislative history as support for the CRJs' authority to impose confidentiality provision requirements on copyright owners. *Id.* at 11–12, citing S. Rep. No. 104–128, at 40 (1995). The Settling Participants then refer to the Register's prior description of the CRJs' power to determine terms under section 115, which included a conclusion by the Register that the CRJs may issue terms that are necessary to effectively implement the statutory license and that the authority to set reasonable terms extends only so far as those terms ensured the smooth administration of the license. *Id.* at 12, citing 73 FR at 48,398 (Aug. 19, 2008). They point out that when making such findings regarding the scope of the CRJs authority to issue terms under section 115, the Register properly relied on authority construing analogous section 114 provisions regarding the CRJs authority to issue terms. *Id.* at 13.

The Settling Participants point to the long history of agents of copyright owners being required to maintain the confidentiality of statements of account as a section 114 term, and that the Register has endorsed such terms under the CARP system and has never taken exception to such terms issued by the CRJs. *Id.* at 13–15. The Settling

Participants state that in the context of the percentage rate structure for section 115 rates, the statements of account contain sensitive financial information and that the confidentiality provisions avoid the risk of competitive injury to users of copyrighted works while ensuring the smooth administration of the license and effectively implement the statutory license. *Id.* at 15.

The Settling Participants point to the CRJs' notice and recordkeeping authority as support for the confidentiality provisions. *Id.,* citing 17 U.S.C. 115(c)(3)(D), 17 U.S.C. 801(b)(7)(C), and 17 U.S.C. 803(c)(3). They point out that similar provisions authorize the CRJs to issue notice and recordkeeping requirements under the section 114 license. They assert that if section 114 notice and recordkeeping authority permits imposing a requirement of confidential treatment for a report of use, section 115 notice and recordkeeping authority must also permit imposing a requirement of confidential treatment for a section 115 statement of account. *Id.,* at 16–17

**III. Register's Determination**

Pursuant to 17 U.S.C. 802(f)(l)(B), the Register issues this timely response to the referred novel material question and determines that the CRJs do not have the authority to adopt the provisions imposing a duty of confidentiality upon copyright owners, regardless of whether the provisions are included in a voluntarily negotiated license agreement between copyright owners and licensees.

*A. CRJs' Authority To Determine Reasonable Terms of Payment*

Under section 115(c)(3)(C), the CRJs are authorized to ''determine reasonable rates and terms of royalty payments.'' 17 U.S.C. 115(c)(3)(C). However, the confidentiality provisions at issue here would function as an obligation on copyright owners who have already received royalty payments. This kind of restriction is distinct in its nature and potential impact than the terms of royalty payments offered as precedent by the Settling Participants.

It is true that section 115(c)(3)(D) states ''[t]he schedule of reasonable rates and terms determined by the Copyright Royalty Judges shall * * * be binding on all copyright owners of nondramatic musical works and persons entitled to obtain a compulsory license.'' 17 U.S.C. 115(c)(3)(D). It is also true that the DC Circuit, in *Recording Indus. Ass'n of Am., Inc.,* 176 F.3d at 535, found that analogous provisions governing the section 114 license authorize binding copyright owners and their agents with regard to terms concerning the audit of royalty payments. However, the audit provisions at issue before the DC Circuit were terms that applied to the method by which accurate royalty payments make their way to copyright owners, and served as an obligation on intermediaries to allow copyright owners to ensure the accuracy of such royalty payments. Similarly, the confidentiality provisions that have been repeatedly established under section 114 are terms that address the method by which accurate royalty payments make their way to copyright owners in accordance with the statute. The confidentiality provisions currently at issue are very different and are not ''terms of royalty payments.'' They do not address the method by which accurate royalty payments make their way to copyright owners. Indeed, the Settling Participants assert that the confidentiality provisions are intended to prevent the risk of competitive injury to licensees by disclosure of the licensees' financial information.

While the confidentiality provisions may avoid a risk of competitive injury for licensees, such provisions are not necessary to effectively implement the statutory license or to insure the smooth administration of the license. The Register notes that the previous determination of rates and terms for the section 115 license, which also included a percentage rate structure, did not include such provisions and the Settling Participants do not identify any apparent detrimental effect on administration of the license.

Having found that the confidentiality provisions are not the sort of terms of payment that the CRJs are authorized to issue, the Register also notes a policy concern that, in the context of statutory licenses, government actors should err on the side of transparency. Transparency, serves to provide maximum confidence in the law for all who rely upon it, including those who require access to the details of license records.

*B. CRJs' Authority To Establish Notice and Recordkeeping Requirements*

The relevant notice and recordkeeping provisions authorize the CRJs to ''establish requirements by which copyright owners may receive reasonable notice of the use of their works under this section, and under which records of such use shall be kept and made available *by persons making digital phonorecord deliveries.''* 17 U.S.C. 115(c)(3)(D) (emphasis added).[3] By the clear language of the statute, the CRJs are authorized to issue notice and recordkeeping requirements under which records of such use shall be kept and made available *by licensees.* Section 115(c)(3)(D) does not provide authority for the CRJs to issue notice and recordkeeping requirements under which records of such use shall be kept and made available *by copyright owners.* The Settling Participants have not pointed to any other authority by which the CRJs' notice and recordkeeping authority authorizes the imposition of obligations on the copyright owners who are subject to the section 115 license.

*C. CRJs' Authority To Adopt Settlements*

The Register acknowledges that Congress' clear goal was to streamline the adoption of settlements. However, the provisions of section 801(b)(7)(A) under which the CRJs are able to adopt aspects of an agreement are limited. The CRJs are not compelled to adopt a privately negotiated agreement to the extent that it includes provisions that are inconsistent with the statutory license. As the Register has stated previously, section 801(b)(7)(A) ''does not foreclose the CRJs from ascertaining whether specific provisions are contrary to law.'' *See* 74 FR 4537, 4540 (Jan. 26, 2009). The Settling Participants acknowledge that section 801(b)(7)(A) generally directs the CRJs to adopt settlements, *except to the extent* that a participant in the proceeding objects to the settlement or *where the settlement agreement includes provisions that are contrary to the provisions of the applicable statute or otherwise contrary to statutory law.* Brief of Settling Participants, Docket No. 2011–3 CRB Phonorecords II (June 7, 2013) at 8–9, citing 74 FR 4537, 4540 (Jan. 26, 2009). Moreover, courts have consistently held that agencies cannot adopt regulations that are contrary to law. *See, e.g., Cal. Cosmetology Coalition* v. *Riley,* 110 F.3d 1454, 1460–61 (9th Cir. 1997) (''The power of an administrative officer or board to administer a federal statute and to prescribe rules and regulations to that end is not the power to make law, for no such power can be delegated by Congress, but the power to adopt regulations to carry into effect the will of Congress as expressed by the statute. A regulation which does not do this, but operates to create a rule out of harmony with the statute, is a mere nullity.'').

As set forth above, the Register determines that the CRJs do not have the statutory authority to adopt

[3] *See also,* 17 U.S.C. 803(c)(3) (''the Copyright Royalty Judges may specify notice and recordkeeping *requirements of users of the copyrights at issue''*) (emphasis added).

confidentiality provisions that would impose obligations on a copyright owner with regard to what he or she is able to do with a statement of account received by a licensee. The Register's finding of the lack of CRJs' authority to impose such confidentiality requirements is consistent with court findings that statutory licenses must ''be construed narrowly,'' especially as they apply against the rights of copyright owners. *See, e.g., Fame Publ'g Co.* v. *Alabama Custom Tape, Inc.,* 507 F.2d 667, 670 (5th Cir. 1975). Accordingly, the Register reads the statute as precluding the CRJs from adopting the confidentiality provisions, including in the context of a negotiated license agreement.

Dated: July 25, 2013.

**Maria A. Pallante,**

*Register of Copyrights.*

[FR Doc. 2013–18672 Filed 8–2–13; 8:45 am]

**BILLING CODE P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice 13–087]**

### Notice of Intent To Grant Partially Exclusive License

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of Intent to Grant Exclusive License.

**SUMMARY:** This notice is issued in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant an partially exclusive license in the United States to practice the inventions described and claimed in USPN 6,730,498, Production of Functional Proteins: Balance of Shear Stress and Gravity, NASA Case No. MSC–22859–1 to Technology Applications International Corporation (TAIC)/Renuèll International Incorporated, having its principal place of business in Aventura, Florida. The fields of use may be limited to topical applications including shampoo. The patent rights in this invention have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective partially exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

**DATES:** The prospective partially exclusive license may be granted unless within fifteen (15)days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

**ADDRESSES:** Objections relating to the prospective license may be submitted to Patent Counsel, Office of Chief Counsel, NASA Johnson Space Center, 2101 NASA Parkway, Houston, Texas 77058, Mail Code AL; Phone (281) 483–3021; Fax (281) 483–6936

**FOR FURTHER INFORMATION CONTACT:** Ted Ro, Intellectual Property Attorney, Office of Chief Counsel, NASA Johnson Space Center, 2101 NASA Parkway, Houston, Texas 77058, Mail Code AL; Phone (281) 244–7148; Fax (281) 483–6936. Information about other NASA inventions available for licensing can be found online at *http://technology.nasa.gov/.*

**Sumara M. Thompson-King,**

*Deputy General Counsel.*

[FR Doc. 2013–18668 Filed 8–2–13; 8:45 am]

**BILLING CODE 7510–13–P**

## NATIONAL CREDIT UNION ADMINISTRATION

### Agency Information Collection Activities: Submission to OMB for Reinstatement, With Change, of a Previously Approved Collection; Comment Request

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Request for comment.

**SUMMARY:** NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for reinstatement under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public. The Truth in Savings Act (TISA) requires depository institutions to disclose to consumers certain information, including interest rates, bonuses, and fees associated with their deposit accounts and accompanying services. TISA also requires NCUA to promulgate implementing regulations governing all credit unions. NCUA regulations require credit unions to provide specific disclosures when an account is opened, when a disclosed term changes or a term account is close to renewal, on periodic statements of account activity, in advertisements, and upon a member or potential member's request. The disclosures are for the benefit of credit union members and consumers; NCUA does not collect the information. Additionally, NCUA regulations contain a recordkeeping requirement for compliance purposes.

**DATES:** Comments will be accepted until October 4, 2013.

**ADDRESSES:** Interested parties are invited to submit written comments to the NCUA Contact and the OMB Reviewer listed below:

NCUA Contact: Tracy Crews, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–837–2861, Email: *OCIOPRA@ncua.gov.*

OMB Contact: Office of Management and Budget, ATTN: Desk Officer for the National Credit Union Administration, Office of Information and Regulatory Affairs, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information, a copy of the information collection request or a copy of submitted comments should be directed to Tracy Crews at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444.

**SUPPLEMENTARY INFORMATION:**

#### I. Abstract and Request for Comments

NCUA is reinstating the information collection approved as OMB control number 3133–0134, under the Truth in Savings Act (TISA), 12 U.S.C. 4301 *et seq.* TISA requires depository institutions to disclose to consumers certain information, including interest rates, bonuses, and fees associated with their deposit accounts and accompanying services. Clear and uniform disclosures of the interest rates payable on deposit accounts and the fees assessable against them by depository institutions permits consumers to make meaningful decisions about their finances.

Under TISA, NCUA must promulgate regulations substantially similar to those issued by the Consumer Financial Protection Bureau, taking into account the nature of credit unions. *See* 12 U.S.C. 4311. NCUA's regulations governing all credit unions are found in 12 CFR Part 707. For the benefit of credit union members and consumers, NCUA regulations require credit unions to provide specific disclosures when an

account is opened, when a disclosed term changes or a term account is close to renewal, on periodic statements of account activity, in advertisements, and upon a member or potential member's request. *See* 12 CFR 707.4, 707.5, 707.6, 707.8. Credit unions are not required to report compliance with the statute and regulations to NCUA, but must retain evidence of compliance for two years after the disclosures are required. *See* 12 CFR 707.9(c).

The NCUA requests that you send your comments on this collection to the location listed in the addresses section. Your comments should address: (a) The necessity of the information collection for the proper performance of NCUA, including whether the information will have practical utility; (b) the accuracy of our estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways we could enhance the quality, utility, and clarity of the information to be collected; and (d) ways we could minimize the burden of the collection of the information on the respondents such as through the use of automated collection techniques or other forms of information technology. It is NCUA's policy to make all comments available to the public for review.

**II. Data**

*Title:* Truth in Savings.

*OMB Number:* 3133–0134.

*Form Number:* None.

*Type of Review:* Reinstatement, with change, of a previously approved collection.

*Description:* The Truth in Savings Act (TISA) requires depository institutions to disclose to consumers certain information, including interest rates, dividends, bonuses, and fees associated with their deposit accounts and accompanying services. Clear and uniform disclosures of the interest rates payable on deposit accounts and the fees assessable against them by depository institutions permits consumers to make meaningful decisions about their finances.

Under TISA, NCUA must promulgate regulations substantially similar to those issued by the Consumer Financial Protection Bureau, taking into account the nature of credit unions. *See* 12 U.S.C. 4311. NCUA's regulations governing all credit unions are found in 12 CFR Part 707.

*Respondents:* Credit Unions.

*Estimated No. of Respondents/ Recordkeepers:* 6,859.

*Estimated Burden Hours per Response:* Various.

*Frequency of Response:* Quarterly per member.

*Estimated Total Annual Burden Hours:* 43,456,180,359 hours.

*Estimated Total Annual Cost:* Inestimable.

By the National Credit Union Administration Board on July 30, 2013.

**Gerard Poliquin,**

*Secretary of the Board.*

[FR Doc. 2013–18744 Filed 8–2–13; 8:45 am]

**BILLING CODE 7535–01–P**

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## NATIONAL CREDIT UNION ADMINISTRATION

### Agency Information Collection Activities: Submission to OMB for Reinstatement, With Change, of a Previously Approved Collection; Comment Request

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Request for comment.

**SUMMARY:** The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public. Part 712 of the National Credit Union Administration's (NCUA) regulations implements authority in the Federal Credit Union Act relating to federal credit union (FCU) lending or investment activity with credit union service organizations (CUSOs). The rule addresses NCUA's safety and soundness concerns for activities conducted by CUSOs and imposes certain recordkeeping obligations on FCUs that have relations with or conduct operations through CUSOs. The rule also imposes regulatory limits on the ability of FCUs to recapitalize their CUSOs in certain circumstances. Although the CUSO rule generally only applies to federal credit unions (FCUs), the rule extends to all federally insured credit unions the provisions ensuring that credit union regulators have access to books and records and that CUSOs are operated as separate legal entities; however, the rule also contains a procedure through which state regulators may seek an exemption from the access to records provisions for credit unions in their state. NCUA has no direct regulatory authority over CUSOs.

**DATES:** Comments will be accepted until October 4, 2013.

**ADDRESSES:** Interested parties are invited to submit written comments to the NCUA Contact and the OMB Reviewer listed below:

NCUA Contact: Tracy Crews, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–837–2861, Email: *OCIOPRA@ncua.gov.*

OMB Contact: Office of Management and Budget, ATTN: Desk Officer for the National Credit Union Administration, Office of Information and Regulatory Affairs, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information, a copy of the information collection request, or a copy of submitted comments should be directed to Tracy Crews at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444.

**SUPPLEMENTARY INFORMATION:**

**I. Abstract and Request for Comments**

NCUA is amending/reinstating the collection for 3133–0149.

Requirements in the rule are:

(i) The credit union must obtain a written agreement from the CUSO, before making a loan to or investment in the CUSO, that the CUSO will: Follow generally accepted accounting principles (GAAP); will prepare financial statements at least quarterly and obtain an annual opinion audit from a certified public accountant; and agree to provide access to its books and records to the NCUA;

(ii) The credit union must obtain a written legal opinion confirming the CUSO is established in a legally sufficient way to limit the credit union's exposure to loss of its loans or investments in the CUSO;

(iii) Any FCU that is less than adequately capitalized must seek NCUA approval before recapitalizing a CUSO that has become insolvent.

These requirements enable NCUA to monitor an FCU's involvement with its CUSO for safety and soundness purposes and help to assure that CUSOs are properly established and maintained in accordance with applicable state law.

The burden of this rule has decreased. The timeframe for credit unions to amend existing agreements with their CUSOs is over, thus eliminating the initial burden of the rule as approved in 2008.

The information collection requirements now are one-time obligations that help NCUA assure the continued safety and soundness of the industry. The rule also requires certain less than adequately capitalized FCUs to obtain NCUA's prior approval before re-capitalizing an insolvent CUSO, helping

minimize the risk of loss to the National Credit Union Share Insurance Fund (NCUSIF).

The NCUA requests that you send your comments on this collection to the location listed in the addresses section. Your comments should address: (a) The necessity of the information collection for the proper performance of NCUA, including whether the information will have practical utility; (b) the accuracy of our estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways we could enhance the quality, utility, and clarity of the information to be collected; and (d) ways we could minimize the burden of the collection of the information on the respondents such as through the use of automated collection techniques or other forms of information technology. It is NCUA's policy to make all comments available to the public for review.

## II. Data

*Title:* 12 CFR Part 712, Credit Union Service Organizations (CUSOs).

*OMB Number:* 3133–0149.

*Form Number:* None.

*Type of Review:* Reinstatement, with change, of a previously approved collection.

*Description:* This rule helps ensure that relationships that credit unions have with credit union service organizations are adequately and properly documented.

*Respondents:* Federal credit unions.

*Estimated No. of Respondents/Recordkeepers:* 148 (133 written agreements plus 15 waivers).

*Estimated Burden Hours per Response:* 2 hours total.

*Frequency of Response:* On occasion.

*Estimated Total Annual Burden Hours:* 562 hours.

*Estimated Total Annual Cost:* 562 hours × $31.56/hr, or $17,737.

By the National Credit Union Administration Board on July 30, 2013.

**Gerard Poliquin,**

*Secretary of the Board.*

[FR Doc. 2013–18743 Filed 8–2–13; 8:45 am]

**BILLING CODE 7535–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 52–027 and 52–028; NRC–2008–0441]**

## Virgil C. Summer Nuclear Station, Units 2 and 3; South Carolina Electric and Gas; Change to the Containment Structure for Additional Electrical Penetration Assemblies

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Exemption and combined license amendment; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is granting both an exemption to allow a departure from the certification information of Tier 1 of the generic design control document (DCD) and License Amendment No. 6 to Combined Licenses (COL), NPF–93 and NPF–94. The COLs were issued to South Carolina Electric and Gas (SCE&G) and South Carolina Public Service Authority (Santee Cooper) (the licensee), for construction and operation of the Virgil C. Summer Nuclear Station (VCSNS), Units 2 and 3 located in Fairfield County, South Carolina. The amendment changes requested adding four electrical penetration assemblies to the containment vessel and shield building in order to support the current electrical loads required within containment. This request includes changes to Tier 1 information located in Tables 2.2.1–1 and 2.2.3–6 as well as Figure 2.2.1–1 of the Updated Final Safety Analysis Report (UFSAR), as well as the corresponding information in Appendix C of the COL. The granting of the exemption allows the Tier 1 changes asked for in the amendment. Because the acceptability of the exemption was determined in part by the acceptability of the amendment, the exemption and amendment are being issued concurrently.

**ADDRESSES:** Please refer to Docket ID NRC–2008–0441 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0441. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov*. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search*.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced. The request for the amendment and exemption were submitted by letter dated August 29, 2012 (ADAMS Accession No. ML12244A011). The licensee supplemented this request on February 11, 2013 (ADAMS Accession No. ML13044A358).
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:** Denise McGovern, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–0681; email: *Denise.McGovern@nrc.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. Introduction

The NRC is granting an exemption from Paragraph B of Section III, ''Scope and Contents,'' of Appendix D, ''Design Certification Rule for the AP1000,'' to Part 52 of Title 10 of the *Code of Federal Regulations* (10 CFR) and issuing License Amendment No. 6 to COLs, NPF–93 and NPF–94, to the licensee. The exemption is required by Paragraph A.4 of Section VIII, ''Processes for Changes and Departures,'' Appendix D to 10 CFR Part 52 to allow the licensee to depart from Tier 1 information. With the requested amendment, the licensee sought to add additional electrical penetration assemblies to containment and the shield building. As part of this request, the licensee needed to change Tier 1 information located in Tables 2.2.1–1 and 2.2.3–6 as well as Figure 2.2.1–1 of the UFSAR. These changes were necessary in order to support the electrical loads within containment. No additional loads or modifications to existing loads are required as part of this request.

Part of the justification for granting the exemption was provided by the review of the amendment. Because the

exemption is necessary in order to issue the requested license amendment, the NRC granted the exemption and issued the amendment concurrently, rather than in sequence. This included issuing a combined safety evaluation containing the NRC staff's review of both the exemption request and the license amendment. The exemption met all applicable regulatory criteria set forth in 10 CFR 50.12, 10 CFR 52.7, and Section VIII.A.4 of Appendix D to 10 CFR Part 52. The license amendment was found to be acceptable as well. The combined safety evaluation is available in ADAMS under Accession No. ML13135A594.

Identical exemption documents (except for referenced unit numbers and license numbers) were issued to the licensee for VCSNS Units 2 and 3 (COLs NPF–93 and NPF–94). These documents can be found in ADAMS under Accession Nos. ML13135A579 and ML13135A586. The exemption is reproduced (with the exception of abbreviated titles and additional citations) in Section II of this document. The amendment documents for COLs NPF–93 and NPF–94 are available in ADAMS under Accession Nos. ML13135A574 and ML13135A577. A summary of the amendment documents is provided in Section III of this document.

## II. Exemption

Reproduced below is the exemption document issued to VCSNS Units 2 and 3. It makes reference to the combined safety evaluation that provides the reasoning for the findings made by the NRC (and listed under Item 1) in order to grant the exemption:

1. In a letter dated August 29, 2012, and supplemented by a letter dated February 11, 2013, the licensee requested from the Commission an exemption from the provisions of 10 CFR Part 52, Appendix D, Section III.B, ''Design Certification Rule for the AP1000 Design, Scope, and Contents,'' as part of license amendment request 12–01, ''Additional Electrical Penetration Assemblies.''

For the reasons set forth in Section 3.1, ''Evaluation of Exemption,'' of the NRC staff's Safety Evaluation, which can be found in ADAMS under Accession No. ML13135A316, the Commission finds that:

A. The exemption is authorized by law;

B. the exemption presents no undue risk to public health and safety;

C. the exemption is consistent with the common defense and security;

D. special circumstances are present in that the application of the rule in this circumstance is not necessary to serve the underlying purpose of the rule;

E. the special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption; and

F. the exemption will not result in a significant decrease in the level of safety otherwise provided by the design.

2. Accordingly, the licensee is granted an exemption to the provisions of 10 CFR Part 52, Appendix D, Section III.B, to allow deviations from the certified Design Control Document (DCD) Tier 1 Table 2.2.1–1, Figure 2.2.1–1, and Table 2.2.3–6 as described in the licensee's request dated August 29, 2012 and supplemented on February 11, 2013. This exemption is related to, and necessary for the granting of License Amendment No. 6, which is being issued concurrently with this exemption.

3. As explained in Section 5.0, ''Environmental Consideration,'' of the NRC staff Safety Evaluation (ADAMS Accession No. ML13135A594), this exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment needs to be prepared in connection with the issuance of the exemption.

4. This exemption is effective as of July 1, 2013.

## III. License Amendment Request

By letter dated August 29, 2012, the licensee requested that the NRC amend the COLs for VCSNS Units 2 and 3, COLs NPF–93 and NPF–94. The licensee supplemented this application on February 11, 2013. The proposed amendment would depart from Tier 2 Material previously incorporated into the UFSAR. Additionally, these Tier 2 changes involve changes to Tier 1 Information in the UFSAR, and the proposed amendment would also revise the associated material that has been included in Appendix C of each of the VEGP, Units 3 and 4 COLs. The requested amendment will revise the Tier 2 information pertaining to the affected structures and tables related to electrical penetration assemblies. These changes require modifications to particular Tier 1 information located in Tables 2.2.1–1 and 2.2.3–6, and Figure 2.2.1–1 of the UFSAR, as well as the corresponding information in Appendix C. The Commission has determined for these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. These changes were necessary in order to support the electrical loads within containment. No additional loads or modifications to existing loads are required as part of this request.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** on October 16, 2012 (77 FR 63343). The supplement had no effect on the no significant hazards consideration determination and no comments were received during the 60-day comment period.

The Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments.

## IV. Conclusion

Using the reasons set forth in the combined safety evaluation, the staff granted the exemption and issued the amendment that the licensee requested on August 29, 2012, and supplemented by letter dated February 11, 2013. The exemption and amendment were issued on July 1, 2013 as part of a combined package to the licensee. (ADAMS Accession No. ML13135A322).

Dated at Rockville, Maryland, this 26th day of July 2013.

For the Nuclear Regulatory Commission.

**Lawrence Burkhart,**

*Chief, Licensing Branch 4, Division of New Reactor Licensing, Office of New Reactors.*

[FR Doc. 2013–18849 Filed 8–2–13; 8:45 am]

BILLING CODE 7590–01–P

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## NUCLEAR REGULATORY COMMISSION

**[Docket No. 040–09092; NRC–2013–0164]**

## AUC, LLC Reno Creek, *In Situ* Leach Uranium Recovery Project, License Application Request To Construct and Operate the Reno Creek ISR Project

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** License application request; opportunity to request a hearing and to petition for leave to intervene; order.

**SUMMARY:** By letter dated October 3, 2012, AUC submitted a license application to the U.S. Nuclear Regulatory Commission (NRC) requesting authorization to construct and operate its proposed Reno Creek, *In Situ* Leach Uranium Recovery (ISR) project to be located in the Powder River Basin near Wright, Wyoming.

**DATES:** Requests for a hearing or petition for leave to intervene must be filed by October 4, 2013. Any potential party as defined in Section 2.4 of Title 10 of the *Code of Federal Regulations* (10 CFR), who believes access to Sensitive Unclassified Non-Safeguards Information (SUNSI) is necessary to respond to this notice must request document access by August 15, 2013.

**ADDRESSES:** Please refer to Docket ID NRC–2013–0164 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, using any of the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2013–0164. Address questions about NRC dockets to Carol Gallagher 301–287–3422; email *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. The AUC License Application request and additional supporting documents (Technical Report and Environmental Report) are available electronically in ADAMS under Accession Nos.: ML122890785 and ML131680092. Documents related to the application can be found in ADAMS under Docket No. 04009092.
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:** Chad Glenn, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6722, email: *Chad.Glenn@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Introduction

An NRC administrative review, documented in a letter to AUC dated June 18, 2013, found the application acceptable to begin a technical review (ADAMS Accession No. ML13161A319). Prior to approving the license application request, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the NRC's regulations. The NRC's findings will be documented in a safety evaluation report and a supplemental environmental impact statement. The supplemental environmental impact statement will be the subject of a subsequent notice in the **Federal Register**.

## II. Opportunity to Request a Hearing and Petitions for Leave to Intervene

The NRC hereby provides notice that this is a proceeding on an application to construct and operate an ISR facility at AUC's Reno Creek site near Wright, Wyoming. Requirements for hearing requests and petitions for leave to intervene are found in 10 CFR 2.309, ''Hearing requests, petitions to intervene, requirements for standing, and contentions.'' Interested persons should consult 10 CFR 2.309, which is available at the NRC's PDR, located at O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852 (or call the PDR at 800–397–4209 or 301–415–4737). The NRC's regulations are also accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.*

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 petition for leave to intervene. 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. The petition must provide the name, address, and telephone number of the petitioner and specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest.

A petition for leave to intervene must also include a specification of the contentions that the petitioner seeks to have litigated in the hearing. For each contention, the petitioner must provide a specific statement of the issue of law or fact to be raised or controverted, as well as a brief explanation of the basis for the contention. Additionally, the petitioner must demonstrate that the issue raised by each contention is within the scope of the proceeding and is material to the findings the NRC must make to support the granting of a license in response to the application. The petition must include a concise statement of the alleged facts or expert opinions which support the position of the petitioner and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the petitioner intends to rely. Finally, the petition must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact, including references to specific portions of the license application that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the license application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief. Each contention must be one that, if proven, would entitle the petitioner to relief.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with NRC regulations, policies, and procedures. The Atomic Safety and Licensing Board will set the time and place for any prehearing conferences and evidentiary hearings, and the appropriate notices will be provided.

Requests for hearing, petitions for leave to intervene, and motions for leave to file contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding

officer that the new or amended filing demonstrates good cause by satisfying the following three factors in 10 CFR 2.309(c)(1)(i)-(iii).

A State, local governmental body, Federally-recognized Indian tribe, or agency thereof may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1) and (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 October 4, 2013. The petition must be filed in accordance with the filing instructions in section III of this document, and should meet the requirements for petitions for leave to intervene set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian tribe does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. A State, local governmental body, Federally-recognized Indian tribe, or agency thereof may also have the opportunity to participate under 10 CFR 2.315(c).

If a hearing is granted, any person who does not wish to become a party to the proceeding may, in the discretion of the presiding officer, be permitted to make a limited appearance under 10 CFR 2.315(a), by making an oral or written statement of his or her position on the issues at any session of the hearing or at any pre-hearing conference, within the limits and conditions fixed by the presiding officer. However, that person may not otherwise participate in the proceeding.

**III. Electronic Submissions (E-Filing)**

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's 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 (1) request 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 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 NRC's ''Guidance for Electronic Submission,'' which is available on the agency'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 the NRC's 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 agency'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 at 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) First 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 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.

**Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation**

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing Sensitive Unclassified Non-Safeguards Information (SUNSI).

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request such access. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication of this notice will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requestor shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCmailcenter@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1); and

(3) The identity of the individual or entity requesting access to SUNSI and the requester's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly-available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreementor Affidavit, or Protective Order[2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after the requestor is granted access to that information. However, if more than 25 days remain between the date the petitioner is granted access to the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff after a determination on standing and need for access, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requestor may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

H. Review of Grants of Access. A party other than the requestor may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR Part 2. Attachment 1 to this Order summarizes

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

[3] Requesters should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

the general target schedule for processing and resolving requests under these procedures.

*It is so ordered.*

Dated at Rockville, Maryland, this 30th day of July, 2013.

For the Nuclear Regulatory Commission.

**Annette L. Vietti-Cook,**

*Secretary of the Commission.*

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING

| Day | Event/Activity |
|---|---|
| 0 | Publication of FEDERAL REGISTER notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests. |
| 10 | Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding. |
| 60 | Deadline for submitting petition for intervention containing: (i) Demonstration of standing; and (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply). |
| 20 | U.S. Nuclear Regulatory Commission (NRC) staff informs the requester of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents). |
| 25 | If NRC staff finds no "need" or no likelihood of standing, the deadline for petitioner/requestor to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access. |
| 30 | Deadline for NRC staff reply to motions to reverse NRC staff determination(s). |
| 40 | (Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI. |
| A | If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff. |
| A + 3 | Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order. |
| A + 28 | Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline. |
| A + 53 | (Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI. |
| A + 60 | (Answer receipt +7) Petitioner/Intervenor reply to answers. |
| >A + 60 | Decision on contention admission. |

[FR Doc. 2013–18811 Filed 8–2–13; 8:45 am]

BILLING CODE 7590–01–P

## POSTAL REGULATORY COMMISSION

**[Docket Nos. C2009–1R, MC2013–57 and CP2013–75; Order No. 1794]**

## New Postal Product

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recent Postal Service filing concerning the addition of Round-Trip Mailer to replace the existing market dominant mailer options for round-trip DVD mail. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* August 15, 2013. *Reply Comments are due:* August 22, 2013.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, General Counsel, at 202–789–6820.

**SUPPLEMENTARY INFORMATION:**

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II. Notice of Filings
III. Ordering Paragraphs

### I. Introduction

On July 26, 2013, the Postal Service filed a request to create a new competitive product, tentatively called "Round-Trip Mailer," to replace existing market dominant mailer options for round-trip DVD mail.[1] The Request, submitted in response to the Commission's order on remand in Docket No. C2009–1R, equalizes the rates for letter-shaped and flat-shaped round-trip DVD mail.

The Request is made pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* As proposed, the requested changes would: (1) remove Letter Round-Trip Mailer and Flat Round-Trip Mailer from the market dominant product list; and (2) add the new Round-Trip Mailer product to the competitive product list. Request, Attachment B. The Request has been assigned Docket No. MC2013–57.

The Postal Service contemporaneously filed proposed changes to the Mail Classification Schedule (MCS) that contain outbound and return prices for the proposed Round-Trip Mailer product. Those changes have been assigned Docket No. CP2013–75.

*Request.* The Request includes the following supporting material:

[1] Docket No. C2009–1R, Request of the United States Postal Service Under Section 3642 to Create Round-Trip Mailer Product, July 26, 2013, at 2 (Request). *See* Order No. 1763, Docket No. C2009–1R, Order on Remand, June 26, 2013 (Order No. 1763).

• Attachment A—a Statement of Supporting Justification addressing applicable rule 3020.32 requirements;

• Attachment B—proposed Mail Classification Schedule language; and

• Attachment C—a letter dated May 17, 1985, describing the Postal Service's interpretation of the Private Express Statutes as they apply to the overseas transmission of computer software in the form of magnetic media.

*Product description.* The existing Letter Round-Trip Mailer and Flat Round-Trip Mailer classifications were established by Order No. 718, in response to the Commission's finding of discrimination in Docket No. C2009–1.[2] The Postal Service asserts that the proposed Round-Trip Mailer product would be ''functionally similar'' to the existing First-Class Mail Round-Trip Mailer. *Id.* Attachment A at 1. It further states that ''service standards and processing elements'' of the proposed product would be ''identical to the service currently received by First-Class Mail letters and flats.'' Request at 3.

The Postal Service contends that, although the existing First-Class Mail Round-Trip Mailer is currently classified as market dominant, it fulfills all of the criteria for competitive products under 39 U.S.C. 3633. *Id.* Attachment A at 2–3. The Postal Service describes the proposed Round-Trip Mailer product as one that competes with ''newer and increasingly dominant forms of digital content delivery,'' such as online streaming and physical DVD rental services. *Id.* at 4. However, it acknowledges that it is not aware of ''another shipping company that provides door-to-door delivery of optical discs such as DVDs.'' *Id.* at 3. The Postal Service argues that the proposed product is ''outside the scope of the letter monopoly because it is not a letter, or because the letter content is within the scope of one of the exceptions/suspensions to the Private Express Statutes.'' *Id.* at 5. It bases this argument on the content of the proposed product, which would be limited to optical discs, invoices, and advertisements. *Id.*

*Additional Information.* The Request, which proposes to add a new product to the competitive product list, failed to include information required by 39 CFR part 3015. Not later than August 5, 2013, the Postal Service shall file with the Commission: (1) sufficient revenue and cost data for the 12-month period following the effective date of the proposed rates to demonstrate that the proposed Round-Trip Mailer product will be in compliance with 39 U.S.C. 3633(a)(2); and (2) a certified statement by a representative of the Postal Service attesting to the accuracy of the data submitted, and explaining why, following the effective date of the proposed rates, competitive products in total will be in compliance with 39 U.S.C. 3633(a)(1) and (3). *See* 39 CFR 3015.3.

*Board of Governors' approval.* The Postal Service states that it intends to present the proposal contained in the Request to the Board of Governors for approval on July 31, 2013. Request at 4. If the Board of Governors does not approve the proposal or chooses to amend it, the Postal Service will ''amend or rescind'' its Request. *Id.* at 4. To avoid potential confusion, the Postal Service shall file with the Commission notice of the determination of the Board of Governors with respect to the Request as soon as practicable, but no later than August 2, 2013.

*Potential subsequent proceedings.* Consistent with Order No. 1763, if the Postal Service amends its Request pursuant to a determination by the Board of Governors, the effective date of any rates proposed in the amended Request shall be no later than September 30, 2013. *See* Order No. 1763 at 39, ¶ 2.

The intent of this phase of the proceeding is to implement a remedy responsive to the Court's remand in *GameFly* v. *Postal Regulatory Commission,* 704 F.3d 145 (D.C. Cir. 2013). The Postal Service has elected to equalize rates for eligible Round-Trip Mailers by reducing the price for a two-ounce First-Class flat-shaped round-trip DVD mailer to the price for a one-ounce First-Class letter-shaped round-trip DVD mailer. Consistent with Order No. 1763, if the Postal Service rescinds its Request or if the Commission denies the Request to establish the Round-Trip Mailer product as a competitive product, the Letter Round-Trip Mailer and Flat Round-Trip Mailer options established by Order No. 718 shall remain on the market dominant product list and the Postal Service shall implement the rates and associated MCS language changes provided in the third ordering paragraph of Order No. 1763. These changes shall be effective no later than September 30, 2013. *See Id.* at 39, ¶ 3.

## II. Notice of Filings

The Commission establishes Docket Nos. MC2013–57 and CP2013–75 for consideration of the Request. Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3633, 3642 and 3662 and 39 CFR part 3015 and 3020, subpart B. Comments are due no later than August 15, 2013. Reply comments, if any, are due August 22, 2013. These filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Tracy N. Ferguson to serve as the Public Representative in Docket Nos. MC2013–57 and CP2013–75.[3]

## III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2013–57 and CP2013–75 for consideration of the Request of the United States Postal Service Under Section 3642 to Create Round-Trip Mailer Product.

2. Pursuant to 39 U.S.C. 505, Tracy N. Ferguson is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in Docket Nos. MC2013–57 and CP2013–75.

3. The Postal Service shall file the additional information identified in this order no later than August 5, 2013.

4. The Postal Service shall file notice of the determination of the Board of Governors with respect to the Request as soon as practicable, but no later than August 2, 2013.

5. Comments by interested persons in these proceedings are due no later than August 15, 2013.

6. Reply comments are due no later than August 22, 2013.

7. The Secretary shall arrange for the publication of this order in the **Federal Register.**

By the Commission.

**Ruth Ann Abrams,**

*Acting Secretary.*

[FR Doc. 2013–18819 Filed 8–2–13; 8:45 am]

BILLING CODE 7710–FW–P

[2] Docket No. C2009–1, Order on Complaint, April 20, 2011, Appendix B (Order No. 718).

[3] Ms. Ferguson also serves as Public Representative in Docket No. C2009–1R. *See* Order No. 1788, Docket No. C2009–1R, Notice and Order Designating Substitute Public Representative, July 24, 2013.

# SECURITIES AND EXCHANGE COMMISSION

## Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 17a–7, SEC File No. 270–147, OMB Control No. 3235–0131.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA''), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of the extension of the previously approved collection of information provided for in Rule 17a–7 (17 CFR 240.17a–7) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 17a–7 requires a non-resident broker-dealer (generally, a broker-dealer with its principal place of business in a place not subject to the jurisdiction of the United States) registered or applying for registration pursuant to Section 15 of the Exchange Act to maintain—in the United States—complete and current copies of books and records required to be maintained under any rule adopted under the Exchange Act and furnish to the Commission a written notice specifying the address where the copies are located. Alternatively, Rule 17a–7 provides that non-resident broker-dealers may file with the Commission a written undertaking to furnish the requisite books and records to the Commission upon demand within 14 days of the demand.

There are approximately 51 non-resident brokers and dealers. Based on the Commission's experience, the Commission estimates that the average amount of time necessary to comply with Rule 17a–7 is one hour per year. Accordingly, the total burden is approximately 51 hours per year. Assuming an average cost per hour of approximately $269 for a compliance manager, the total internal cost of compliance for the respondents is approximately $13,719 per year.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following Web site: *www.reginfo.gov.* Comments should be directed to (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or by sending an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted within 30 days of this notice.

Dated: July 30, 2013.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–18764 Filed 8–2–13; 8:45 am]

**BILLING CODE 8011–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 30635; 812–14048]**

## GENCAP Strategies LLC, et al.; Notice of Application

July 30, 2013.

**AGENCY:** Securities and Exchange Commission (the ''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, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and (B) of the Act.

**APPLICANTS:** GENCAP Strategies LLC (formerly, Active Relief, LLC) (the ''Adviser''), Factor Shares Trust (the ''Trust''), and Esposito Securities, LLC (the ''Distributor'').

**SUMMARY OF APPLICATION:** Applicants request an order that permits: (a) Actively-managed series of the Trust 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; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares.

**DATES:** *Filing Dates:* The application was filed on June 26, 2012, and amended on April 4, 2013, and July 19, 2013.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 26, 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. Applicants, c/o W. John McGuire, Esq. and Michael Berenson, Esq., Bingham McCutchen LLP, 2020 K Street NW., Washington, DC 20006.

**FOR FURTHER INFORMATION CONTACT:** Laura L. Solomon, Senior Counsel, at (202) 551–6915 or Daniele Marchesani, Branch Chief, at (202) 551–6821 (Division of Investment Management, Exemptive Applications Office).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

### Applicants' Representations

1. The Trust is registered as an open-end management investment company under the Act and is organized as a Delaware statutory trust. The Trust will initially offer one actively-managed series (the ''Initial Fund''), whose investment objective will be to provide capital appreciation through investment in companies which have significant operations in Mongolia.

2. GENCAP Strategies LLC, a Texas limited liability company, is in the process of, and any other Adviser (as defined below) will be, registered as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act''). An Adviser will be the investment adviser to each Fund (as defined below) and, subject to the oversight and authority of the board of trustees (the ''Board'') of the Trust, will implement each Fund's investment program and oversee the day-to-day portfolio activities of each Fund. The Adviser may engage one or more subadvisers (''Sub-Advisers''). Any Sub-Adviser will be registered under the Advisers Act or not subject to registration. The Distributor is registered

as a broker-dealer (''Broker'') under the Securities Exchange Act of 1934 (the ''Exchange Act'') and will serve as the principal underwriter and distributor for each of the Funds.[1]

3. Applicants request that the order apply to the Initial Fund as well as to future series of the Trust and any other open-end management investment companies or series thereof that operate as actively-managed exchange-traded funds (''Future Funds''). Any Future Fund will (a) be advised by GENCAP Strategies LLC or an entity controlling, controlled by, or under common control with GENCAP Strategies LLC or any successor thereto (each such entity, an ''Adviser'')[2] and (b) comply with the terms and conditions of the application.[3] The Initial Fund and Future Funds together are the ''Funds.'' Each Fund will operate as an actively managed exchange-traded fund (''ETF'').

4. The Funds may invest in equity securities (''Equity Funds'') or fixed income securities (''Fixed Income Funds'') or both equity and fixed income securities (''Blend Funds'') traded in the U.S. or non-U.S. markets. Equity Funds that invest in equity securities traded in the U.S. market (''Domestic Equity Funds''), Fixed Income Funds that invest in fixed income securities traded in the U.S. market (''Domestic Fixed Income Funds'') and Blend Funds that invest in equity and fixed income securities traded in the U.S. market (''Domestic Blend Funds'') together are ''Domestic Funds.'' Funds that invest in foreign and domestic equity securities are ''Global Equity Funds.'' Funds that invest in foreign and domestic fixed income securities are ''Global Fixed Income Funds.'' Funds that invest in equity securities and fixed income securities traded in the U.S. or non-U.S. markets are ''Global Blend Funds'' (and collectively with Global Equity Funds and Global Fixed Income Funds, ''Global Funds''). Funds that invest in foreign equity securities are ''Foreign Equity Funds,'' Funds that invest in foreign fixed income securities are ''Foreign Fixed Income Funds'' and Funds that invest in foreign equity and foreign fixed income securities are ''Foreign Blend Funds'' (and collectively with Foreign Equity Funds and Foreign Fixed Income Funds, ''Foreign Funds''). The Funds may also invest in ''Depositary Receipts''.[4] Each Fund will hold securities and other assets and positions (''Portfolio Positions'').[5]

5. Applicants also request that any exemption under section 12(d)(1)(J) of the Act from sections 12(d)(1)(A) and (B) apply to: (i) Any Fund; (ii) any Acquiring Fund (as defined below); and (iii) any Brokers selling Shares of a Fund to an Acquiring Fund or any principal underwriter of a Fund.[6] A management investment company or unit investment trust registered under the Act that is not part of the same ''group of investment companies'' as the Funds within the meaning of section 12(d)(1)(G)(ii) of the Act and that acquires Shares of a Fund in excess of the limits of Section 12(d)(1)(A) of the Act is referred to as an ''Acquiring Management Company'' or an ''Acquiring Trust,'' respectively, and the Acquiring Management Companies and Acquiring Trusts are referred to collectively as ''Acquiring Funds.'' Acquiring Funds do not include the Funds.[7]

6. Applicants anticipate that a Creation Unit will consist of at least 25,000 Shares and that the trading price of a Share will range from $20 to $200. All orders to purchase Creation Units must be placed with the Distributor by or through an ''Authorized Participant,'' which is either (a) a Broker or other participant in the Continuous Net Settlement System of the National Securities Clearing Corporation (''NSCC'', and such process the ''NSCC Process''), or (b) a participant in the Depository Trust Company (''DTC,'' such participant ''DTC Participant'' and such process the ''DTC Process''), which, in either case, has executed an agreement with the Distributor with respect to the purchase and redemption of Creation Units.

7. 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'').[8] On any given Business Day[9] 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, and these instruments may be referred to, in the case of either a purchase or a redemption, as the ''Creation Basket.'' In addition, the Creation Basket will correspond pro rata to the positions in a Fund's portfolio (including cash positions),[10] 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;[11] or (c) TBA Transactions[12] and other positions that cannot be transferred in kind[13] will be

[1] For purposes of the requested order, the term ''Distributor'' shall include any other entity that acts as the distributor and principal underwriter of the Creation Units of Shares of the Funds in the future and complies with the terms and conditions of the application. Any future Distributor will be a Broker registered under the Exchange Act.

[2] For the purposes of the requested order, ''successor'' is limited to an entity that would result from a reorganization into another jurisdiction or a change in the type of business organization.

[3] All entities that currently intend to rely on the order are named as applicants. Any other entity that relies on the order in the future will comply with the terms and conditions of the application.

[4] Depositary Receipts are typically issued by a financial institution (a ''Depository'') and evidence ownership in a security or pool of securities that have been deposited with the Depository. A Fund will not invest in any Depositary Receipts that the Adviser or any Sub-Adviser deems to be illiquid or for which pricing information is not readily available. No affiliated persons of applicants or any Sub-Adviser will serve as the Depository for any Depositary Receipts held by a Fund.

[5] If a Fund invests in derivatives, then (a) the Fund's Board will periodically review and approve the Fund's use of derivatives and how the Fund's investment adviser assesses and manages risk with respect to the Fund's use of derivatives and (b) the Fund's disclosure of its use of derivatives in its offering documents and periodic reports will be consistent with relevant Commission and staff guidance.

[6] Any future principal underwriter of a Fund will be a Broker registered under the Exchange Act and will comply with the terms and conditions of the application.

[7] An Acquiring Fund may rely on the order only to invest in a Fund and not in any other registered investment company.

[8] 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.

[9] Each Fund will sell and redeem Creation Units on any day that the Fund is open, including as required by section 22(e) of the Act (each, a ''Business Day'').

[10] The portfolio used for this purpose will be the same portfolio used to calculate the Fund's net asset value (''NAV'') for that Business Day.

[11] A tradeable round lot for a security will be the standard unit of trading in that particular type of security in its primary market.

[12] 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.

[13] This includes instruments that can be transferred in kind only with the consent of the

excluded from the Creation Basket.[14] If there is a difference between the NAV attributable to a Creation Unit and the aggregate market value of the Creation Basket 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'').

8. 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; (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 Process or DTC Process; or (ii) in the case of Global Funds and 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 Global Fund or Foreign Fund would be subject to unfavorable income tax treatment if the holder receives redemption proceeds in kind.[15]

9. Each Business Day, before the open of trading on a national securities exchange, as defined in section 2(a)(26) of the Act (an ''Exchange''), on which Shares are listed and traded, each Fund will cause to be published through the NSCC the names and quantities of the instruments comprising the Creation Basket, as well as the estimated Balancing Amount (if any), for that day. The published Creation Basket will apply until a new Creation Basket is announced on the following Business Day, and there will be no intra-day changes to the Creation Basket except to correct errors in the published Creation Basket. For each Fund, the relevant Exchange will disseminate every 15 seconds throughout the trading hours a calculation of the estimated NAV of a Share (which estimate is expected to be accurate to within a few basis points).

10. Each Fund will recoup the settlement costs charged by NSCC and DTC by imposing a fee (the ''Transaction Fee'') on investors purchasing or redeeming Creation Units.[16] All orders to purchase Creation Units must be placed with the Distributor by or through an Authorized Participant and the Distributor will transmit such orders to the Funds. The Distributor will be responsible for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it.

11. Purchasers of Shares in Creation Units may hold such Shares or may sell such Shares into the secondary market. Shares will be listed and traded at negotiated prices on an Exchange and it is expected that the relevant Exchange will designate one or more member firms to maintain a market for the Shares.[17] The price of Shares trading on an Exchange will be based on a current bid-offer in the secondary market. Purchases and sales of Shares in the secondary market will not involve a Fund and will be subject to customary brokerage commissions and charges.

12. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs. Applicants expect that secondary market purchasers of Shares will include both institutional and retail investors.[18] Applicants believe that the structure and operation of the Funds will be designed to enable efficient arbitrage and, thereby, minimize the probability that Shares will trade at a material premium or discount to a Fund's NAV.

13. Shares will not be individually redeemable and owners of Shares may acquire those Shares from a Fund, or tender such shares for redemption to the Fund, in Creation Units only. To redeem, an investor must accumulate enough Shares to constitute a Creation Unit. Redemption requests must be placed by or through an Authorized Participant. As discussed above, redemptions of Creation Units will generally be made on an in-kind basis, subject to certain specified exceptions under which redemptions may be made in whole or in part on a cash basis, and will be subject to a Transaction Fee.

14. Neither the Trust nor any Fund will be advertised or marketed or otherwise held out as a traditional open-end investment company or mutual fund. Instead, each Fund will be marketed as an ''exchange-traded fund.'' 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 acquire those Shares from a Fund or tender those Shares for redemption to the Fund in Creation Units only.

15. The Trust's Web site (the ''Web site''), which will be publicly available prior to the offering of Shares, will include each Fund's prospectus (''Prospectus''), Statement of Additional Information (''SAI''), and summary prospectus, if used. The Web site will contain, on a per Share basis for each Fund, the prior Business Day's NAV and the market closing price or mid-point of the bid/ask spread at the time of calculation of such NAV (''Bid/Ask Price''), and a calculation of the premium or discount of the market closing price or the Bid/Ask Price against such NAV. On each Business

original counterparty to the extent the Fund does not intend to seek such consents.

[14] Because these instruments will be excluded from the Creation Basket, their value will be reflected in the determination of the Balancing Amount (defined below).

[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] Cash purchases and redemptions of Shares may involve a higher Transaction Fee to cover the costs of purchasing and selling the applicable Deposit and Redemption Instruments. In all cases, the Transaction Fee will be limited in accordance with requirements of the Commission applicable to management investment companies offering redeemable securities.

[17] If Shares are listed on The NASDAQ Stock Market LLC (''Nasdaq'') or a similar electronic Exchange (including NYSE), one or more member firms of that Exchange will act as market maker (a ''Market Maker'') and maintain a market for Shares trading on that Exchange. On Nasdaq, no particular Market Maker would be contractually obligated to make a market in Shares. However, the listing requirements on Nasdaq stipulate that at least two Market Makers must be registered in Shares to maintain a listing. Registered Market Makers are required to make a continuous two-sided market or subject themselves to regulatory sanctions. No Market Maker will be an affiliated person, or an affiliated person of an affiliated person, of the Funds, except within the meaning of section 2(a)(3)(A) or (C) of the Act due solely to ownership of Shares.

[18] Shares will be registered in book-entry form only. DTC or its nominee will be the registered owner of all outstanding Shares. Beneficial ownership of Shares will be shown on the records of DTC or DTC Participants.

Day, prior to the commencement of trading in Shares on an Exchange, the Adviser shall post on the Web site the identities and quantities of the Portfolio Positions held by each Fund that will form the basis for the calculation of the NAV at the end of that Business Day.[19]

**Applicants' Legal Analysis**

1. Applicants request an order under section 6(c) of the Act granting 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, and under sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and (2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and (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 provision 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 holder, upon its presentation to the issuer, is entitled to receive approximately a 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 Trust and each Fund to redeem Shares in Creation Units only. Applicants state that investors may purchase Shares in Creation Units from each Fund and that Creation Units will always be redeemable in accordance with the provisions of the Act. Applicants further state that because the market price of Shares will be disciplined by arbitrage opportunities, investors should be able to 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 the 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 resulting from sales at different prices, and (c) assure an orderly distribution of investment company shares by eliminating price competition from brokers 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 the Funds as parties and cannot 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 arbitrage activity will ensure that the difference between the market price of Shares and their NAV remains immaterial.

*Section 22(e) of the Act*

7. Section 22(e) 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 of Creation Units of the Foreign and Global Funds is contingent not only on the settlement cycle of the U.S. securities markets but also on the delivery cycles present in foreign markets for underlying foreign Portfolio Positions in which those Funds invest. Applicants have been advised that, under certain circumstances, the delivery cycles for transferring Portfolio Positions to redeeming investors, coupled with local market holiday schedules, will require a delivery process of up to fourteen (14) calendar days. Applicants therefore request relief from section 22(e) in order to provide payment or satisfaction of redemptions within a longer number of calendar days as required for such payment or satisfaction in the principal local markets where transactions in the Portfolio Positions of each Foreign and Global Fund customarily clear and settle, but in all cases no later than fourteen (14) days following the tender of a Creation Unit.[20]

8. Applicants state that section 22(e) was designed to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds. Applicants assert that the requested relief will not lead to the problems that section 22(e) was designed to prevent.

[19] Under accounting procedures followed by each Fund, trades made on the prior Business Day (''T'') will be booked and reflected in NAV on the current Business Day (T+1). Accordingly, the Funds will be able to disclose at the beginning of the Business Day the portfolio that will form the basis for the NAV calculation at the end of the Business Day.

[20] Rule 15c6–1 under the Exchange Act requires that most securities transactions be settled within three business days of the trade. Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations applicants may have under rule 15c6–1.

Applicants state that the SAI will identify those instances in a given year where, due to local holidays, more than seven calendar days, up to a maximum of fourteen calendar days, will be needed to deliver redemption proceeds and will list such holidays. Applicants are not seeking relief from section 22(e) for Foreign and Global Funds that do not effect redemptions of Creation Units in-kind.

*Section 12(d)(1) of the Act*

9. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring shares of an investment company if the 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 its 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.

10. Applicants request relief to permit Acquiring Funds to acquire Shares in excess of the limits in section 12(d)(1)(A) of the Act and to permit the Funds, their principal underwriters and any Broker to sell Shares to Acquiring Funds in excess of the limits in section 12(d)(l)(B) of the Act.

11. Applicants assert that the proposed transactions will not lead to any of the abuses that section 12(d)(1) was designed to prevent. Applicants submit that the proposed conditions to the requested relief address the concerns underlying the limits in section 12(d)(1), which include concerns about undue influence, excessive layering of fees and overly complex structures.

12. Applicants submit that their proposed conditions address any concerns regarding the potential for undue influence. To limit the control that an Acquiring Fund may have over a Fund, applicants propose a condition prohibiting the adviser of an Acquiring Management Company (''Acquiring Fund Advisor''), sponsor of an Acquiring Trust (''Sponsor''), any person controlling, controlled by, or under common control with the Acquiring Fund Advisor or Sponsor, and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by the Acquiring Fund Advisor, the Sponsor, or any person controlling, controlled by, or under common control with the Acquiring Fund Advisor or Sponsor (''Acquiring Fund's 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 Sub-Adviser to an Acquiring Fund (''Acquiring Fund Sub-Advisor''), any person controlling, controlled by or under common control with the Acquiring Fund Sub-Advisor, and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Acquiring Fund Sub-Advisor or any person controlling, controlled by or under common control with the Acquiring Fund Sub-Advisor (''Acquiring Fund's Sub-Advisory Group'').

13. Applicants propose a condition to ensure that no Acquiring Fund or Acquiring Fund Affiliate [21] (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, Acquiring Fund Advisor, Acquiring Fund Sub-Advisor, employee or Sponsor of the Acquiring Fund, or a person of which any such officer, director, member of an advisory board, Acquiring Fund Advisor, Acquiring Fund Sub-Advisor, employee or Sponsor is an affiliated person (except any person whose relationship to the Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate).

14. Applicants propose several conditions to address the potential for layering of fees. Applicants note that the board of directors or trustees of any Acquiring Management Company, including a majority of the directors or trustees who are not ''interested persons'' within the meaning of section 2(a)(19) of the Act (for any board of directors or trustees, the ''Independent Directors''), will be required to 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 in which the Acquiring Management Company may invest. Applicants also state that any sales charges and/or service fees charged with respect to shares of an Acquiring Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.[22]

15. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that a 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 to purchase shares of other investment companies for short-term cash management purposes.

16. To ensure that an Acquiring Fund is aware of the terms and conditions of the requested order, the Acquiring Funds must enter into an agreement with the respective Funds (''Acquiring Fund Agreement''). The Acquiring Fund Agreement will include an acknowledgement from the Acquiring Fund that it may rely on the order only to invest in a Fund and not in any other investment company.

*Section 17(a) of the Act*

17. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such person (''Second Tier Affiliates''), from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines ''affiliated person'' to include 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 any person directly or indirectly controlling, controlled by, or under common control with, the other person. Section 2(a)(9) of the Act provides that a control relationship will be presumed where one person owns

[21] An ''Acquiring Fund Affiliate'' is any Acquiring Fund Advisor, Acquiring Fund Sub-Advisor(s), Sponsor, promoter and principal underwriter of an Acquiring Fund, and any person controlling, controlled by or under common control with any of these entities. ''Fund Affiliate'' is an investment adviser, promoter, or principal underwriter of a Fund or any person controlling, controlled by or under common control with any of these entities.

[22] Any reference to NASD Conduct Rule 2830 includes any successor or replacement rule that may be adopted by the Financial Industry Regulatory Authority.

more than 25% of another person's voting securities. The Funds may be deemed to be controlled by the Adviser or an entity controlling, controlled by or under common control with 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 or an entity controlling, controlled by or under common control with the Adviser (an ''Affiliated Fund'').

18. Applicants request an exemption under sections 6(c) and 17(b) of the Act from sections 17(a)(1) and 17(a)(2) of the Act to permit in-kind purchases and redemptions of Creation Units from the Funds by persons that are affiliated persons or Second Tier Affiliates of the Funds solely by virtue of one or more of the following: (a) Holding 5% or more, or more than 25%, of the Shares of the Trust 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. Applicants also request an exemption in order to permit each Fund to sell Shares to and redeem Shares from, and engage in the in-kind transactions that would accompany such sales and redemptions with, any Acquiring Fund of which the Fund is an affiliated person or Second-Tier Affiliate.[23]

19. Applicants contend that no useful purpose would be served by prohibiting such affiliated persons or Second-Tier Affiliates from acquiring or redeeming Creation Units through in-kind transactions. Both the deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions will be the same for all purchases and redemptions. Deposit Instruments and Redemptions Instruments will be valued in the same manner as the Portfolio Positions held by the relevant Fund. Applicants thus believe that in-kind purchases and redemptions will not result in self-dealing or overreaching of the Fund.

20. Applicants also submit that the sale of Shares to and redemption of Shares from an Acquiring Fund satisfies the standards for relief under sections 17(b) and 6(c) of the Act. Applicants note that any consideration paid for the purchase or redemption of Creation Units directly from a Fund will be based on the NAV of the Fund.[24] The Acquiring Fund Agreement will require any Acquiring Fund that purchases Creation Units directly from a Fund to represent that the purchase will be in compliance with its investment restrictions and consistent with the investment policies set forth in its registration statement. Applicants also state that the proposed transactions are consistent with the general purposes of the Act and appropriate in the public interest.

**Applicants' Conditions**

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

A. Actively Managed Exchange-Traded Fund Relief

1. Neither the Trust nor any 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 the Shares are not individually redeemable and that owners of the Shares may acquire those Shares from the Fund and tender those Shares for redemption to the Fund in Creation Units only.

2. 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.

3. As long as a Fund operates in reliance on the Order, its Shares will be listed on an Exchange.

4. On each Business Day, before commencement of trading in Shares on a Fund's Exchange, the Fund will disclose on its Web site the identities and quantities of the Portfolio Positions held by the Fund that will form the basis for the Fund's calculation of NAV per share at the end of the Business Day.

5. The Adviser or any Sub-Advisers, directly or indirectly, will not cause any Authorized Participant (or any investor on whose behalf an Authorized Participant may transact with the Fund) to acquire any Deposit Instrument for a Fund through a transaction in which the Fund could not engage directly.

6. The requested relief to permit ETF operations will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of actively-managed exchange-traded funds.

B. Section 12(d)(1) Relief

7. The members of an Acquiring Fund's Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The members of an Acquiring Fund's Sub-Advisory Group will not control (individually or in the aggregate) a 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 Acquiring Fund's Advisory Group or the Acquiring Fund's 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 that Fund's Shares. This condition does not apply to the Acquiring Fund's Sub-Advisory Group with respect to a Fund for which the Acquiring Fund Sub-Advisor or a person controlling, controlled by, or under common control with the Acquiring Fund Sub-Advisor acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

8. No Acquiring Fund or Acquiring Fund Affiliate will cause any existing or potential investment by the Acquiring Fund in a Fund to influence the terms of any services or transactions between the Acquiring Fund or an Acquiring Fund Affiliate and the Fund or a Fund Affiliate.

9. The board of trustees or directors of an Acquiring Management Company, including a majority of the Independent Trustees, will adopt procedures reasonably designed to ensure that the Acquiring Fund Advisor and any Acquiring Fund Sub-Advisor are conducting the investment program of the Acquiring Management Company without taking into account any consideration received by the Acquiring

[23] Applicants anticipate that most Acquiring Funds will purchase Shares in the secondary market and will not purchase or redeem Creation Units directly from a Fund. To the extent that purchases and sales of Shares occur in the secondary market and not through principal transactions directly between an Acquiring Fund 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 an Acquiring Fund and redemptions of those Shares in Creation Units. The requested relief is also intended to cover in-kind transactions that would 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 an affiliated person of an affiliated person of an Acquiring Fund because the Adviser is also an investment adviser to that Acquiring Fund.

[24] Applicants acknowledge that the receipt of compensation by (a) an affiliated person of an Acquiring Fund, or an affiliated person of such person, for the purchase by the Acquiring Fund of Shares of a Fund 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 an Acquiring Fund, may be prohibited by section 17(e)(1) of the Act. The Acquiring Fund Agreement also will include this acknowledgment.

Management Company or an Acquiring Fund Affiliate from a Fund or a Fund Affiliate in connection with any services or transactions.

10. Once an investment by an Acquiring Fund in Shares exceeds the limits in section l2(d)(1)(A)(i) of the Act, the Board, including a majority of the Independent Trustees, will determine that any consideration paid by the Fund to an Acquiring Fund or an Acquiring Fund 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; (ii) is within the range of consideration that the 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 and its investment adviser(s), or any person controlling, controlled by or under common control with such investment adviser(s).

11. No Acquiring Fund or Acquiring Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause the Fund to purchase a security in any Affiliated Underwriting.

12. The Board, including a majority of the Independent Trustees, will adopt procedures reasonably designed to monitor any purchases of securities by the Fund in an Affiliated Underwriting, once an investment by an Acquiring Fund 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 Acquiring Fund 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; (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 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.

13. Each 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 an Acquiring Fund 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 determinations of the Board were made.

14. Before investing in Shares of a Fund in excess of the limits in section 12(d)(1)(A), each Acquiring Fund and the Fund will execute an Acquiring Fund Agreement stating, without limitation, that their boards of directors or boards of trustees and their investment adviser(s), or their Sponsors or trustees (''Trustee''), 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), an Acquiring Fund will notify the Fund of the investment. At such time, the Acquiring Fund will also transmit to the Fund a list of the names of each Acquiring Fund Affiliate and Underwriting Affiliate. The Acquiring Fund 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 Acquiring Fund will maintain and preserve a copy of the Order, the Acquiring Fund 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.

15. The Acquiring Fund Advisor, Trustee or Sponsor, as applicable, will waive fees otherwise payable to it by the Acquiring Fund in an amount at least equal to any compensation (including fees received pursuant to any plan adopted under rule 12b–l under the Act) received from the Fund by the Acquiring Fund Advisor, Trustee or Sponsor, or an affiliated person of the Acquiring Fund Advisor, Trustee or Sponsor, other than any advisory fees paid to the Acquiring Fund Advisor, Trustee or Sponsor, or its affiliated person by the Fund, in connection with the investment by the Acquiring Fund in the Fund. Any Acquiring Fund Sub-Advisor will waive fees otherwise payable to the Acquiring Fund Sub-Advisor, directly or indirectly, by the Acquiring Management Company in an amount at least equal to any compensation received from a Fund by the Acquiring Fund Sub-Advisor, or an affiliated person of the Acquiring Fund Sub-Advisor, other than any advisory fees paid to the Acquiring Fund Sub-Advisor or its affiliated person by the Fund, in connection with any investment by the Acquiring Management Company in the Fund made at the direction of the Acquiring Fund Sub-Advisor. In the event that the Acquiring Fund Sub-Advisor waives fees, the benefit of the waiver will be passed through to the Acquiring Management Company.

16. Any sales charges and/or service fees charged with respect to shares of an Acquiring Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

17. No Fund will acquire securities of any other 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 to purchase shares of other investment companies for short-term cash management purposes.

18. Before approving any advisory contract under section 15 of the Act, the board of trustees or directors of each Acquiring Management Company, including a majority of the Independent Trustees, will find that the advisory fees charged under such advisory 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 in which the Acquiring Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Acquiring Management Company.

For the Commission, by the Division of Investment Management, under delegated authority.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–18762 Filed 8–2–13; 8:45 am]

BILLING CODE 8011–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 30636; File No. 812–14145]**

## ERNY Financial ETF Trust, et al.; Notice of Application

July 30, 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 17(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 OF APPLICATION:** Applicants request an order that would permit (a) series of certain open-end management investment companies to issue shares (''Shares'') redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Shares to occur at negotiated market prices rather than at net asset value (''NAV''); (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; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares.

**APPLICANTS:** ERNY Financial ETF Trust (''Trust''), ERNY Financial Advisors, LLC (''Initial Adviser''), and ERNY Financial, Inc. (an Affiliated Index Provider (defined below)).

**FILING DATES:** The application was filed on April 5, 2013 and amended on May 9, 2013 and July 25, 2013.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 26, 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 20549–1090; Applicants, 402 West Broadway, Suite 2800, San Diego, CA 92101.

**FOR FURTHER INFORMATION CONTACT:** David J. Marcinkus, Attorney-Advisor at (202) 551–6882, or David P. Bartels, Branch Chief, at (202) 551–6821 (Division of Investment Management, Exemptive Applications Office).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for 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 a statutory trust organized under the laws of Delaware. The Trust will register under the Act as an open-end management investment company with multiple series.

2. The Initial Adviser will register as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act'') and will be the investment adviser to the Funds. Any other Adviser (defined below) will also be registered as an investment adviser under the Advisers Act. The Adviser may enter into sub-advisory agreements with one or more investment advisers to act as sub-advisers to particular Funds (each, a ''Sub-Adviser''). Any Sub-Adviser will either be registered under the Advisers Act or will not be required to register thereunder.

3. The Trust will enter into a distribution agreement with one or more distributors (each, a ''Distributor''). Each Distributor will be a broker-dealer (''Broker'') registered under the Securities Exchange Act of 1934 (the ''Exchange Act'') and will act as distributor and principal underwriter of one or more of the Funds. The Distributor of any Fund may be an affiliated person, as defined in section 2(a)(3) of the Act (''Affiliated Person''), or an affiliated person of an Affiliated Person (''Second-Tier Affiliate''), of that Fund's Adviser and/or Sub-Advisers. No Distributor will be affiliated with any Exchange (defined below).

4. Applicants request that the order apply to the initial series of the Trust described in the application (''Initial Fund''), as well as any additional series of the Trust and other open-end management investment companies, or series thereof, that may be created in the future (''Future Funds''), each of which will operate as an exchanged-traded fund (''ETF'') and will track a specified index comprised of domestic or foreign equity and/or fixed income securities (each, an ''Underlying Index''). Any Future Fund will (a) be advised by the Initial Adviser or an entity controlling, controlled by, or under common control with the Initial Adviser (each, an ''Adviser'') and (b) comply with the terms and conditions of the application. The Initial Fund and Future Funds, together, are the ''Funds.'' [1]

5. Each Fund will hold certain securities (''Portfolio Securities'') selected to correspond generally to the performance of its Underlying Index. Certain of the Funds will be based on Underlying Indexes that will be comprised solely of equity and/or fixed income securities issued by one or more of the following categories of issuers: (i) Domestic issuers and (ii) non-domestic issuers meeting the requirements for trading in U.S. markets. Other Funds will be based on Underlying Indexes that will be comprised solely of foreign and domestic, or solely foreign, equity and/or fixed income securities (''Foreign Funds'').

6. Applicants represent that each Fund will invest at least 80% of its assets (excluding securities lending collateral) in the component securities of its respective Underlying Index (''Component Securities'') and TBA Transactions,[2] and in the case of Foreign Funds, Component Securities and Depositary Receipts [3] representing

[1] All existing entities that intend to rely on the requested 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 order. 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.

[2] A ''to-be-announced transaction'' or ''TBA Transaction'' is a method of trading mortgage-backed securities. In a TBA Transaction, the buyer and seller agree upon general trade parameters such as agency, settlement date, par amount and price. The actual pools delivered generally are determined two days prior to settlement date.

[3] Depositary receipts representing foreign securities (''Depositary Receipts'') include American Depositary Receipts and Global Depositary Receipts. The Funds may invest in Depositary Receipts representing foreign securities in which they seek to invest. Depositary Receipts are typically issued by a financial institution (a ''depositary bank'') and evidence ownership interests in a security or a pool of securities that have been deposited with the depositary bank. A Fund will not invest in any Depositary Receipts that the Adviser or any Sub-Adviser deems to be illiquid or for which pricing information is not readily

Component Securities. Each Fund may also invest up to 20% of its assets in certain index futures, options, options on index futures, swap contracts or other derivatives, as related to its respective Underlying Index and its Component Securities, cash and cash equivalents, other investment companies, as well as in securities and other instruments not included in its Underlying Index but which the Adviser believes will help the Fund track its Underlying Index. A Fund may also engage in short sales in accordance with its investment objective.

7. The Trust may issue Funds that seek to track Underlying Indexes constructed using 130/30 investment strategies (''130/30 Funds'') or other long/short investment strategies (''Long/Short Funds''). Each Long/Short Fund will establish (i) exposures equal to approximately 100% of the long positions specified by the Long/Short Index[4] and (ii) exposures equal to approximately 100% of the short positions specified by the Long/Short Index. Each 130/30 Fund will include strategies that: (i) Establish long positions in securities so that total long exposure represents approximately 130% of a Fund's net assets; and (ii) simultaneously establish short positions in other securities so that total short exposure represents approximately 30% of such Fund's net assets. Each Business Day, for each Long/Short Fund and 130/30 Fund, the Adviser will provide full portfolio transparency on the Fund's publicly available Web site (''Web site'') by making available the Fund's Portfolio Holdings (defined below) before the commencement of trading of Shares on the Listing Exchange (defined below).[5] The information provided on the Web site will be formatted to be reader-friendly.

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 the Component Securities of its Underlying Index in the same approximate proportions as in such Underlying Index. A Fund using a representative sampling strategy will hold some, but not necessarily all of the Component Securities of its Underlying Index. Applicants state that a Fund using a representative sampling strategy will not be expected to track the performance of its Underlying Index with the same degree of accuracy as would an investment vehicle that invested in every Component Security of the Underlying Index with the same weighting as 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%.

9. Each Fund will be entitled to use its Underlying Index pursuant to either a licensing agreement with the entity that compiles, creates, sponsors or maintains the Underlying Index (each, an ''Index Provider'') or a sub-licensing arrangement with the Adviser, which will have a licensing agreement with such Index Provider.[6] A ''Self-Indexing Fund'' is a Fund for which an Affiliated Person, or a Second-Tier Affiliate, of the Trust or a Fund, of the Adviser, of any Sub-Adviser to or promoter of a Fund, or of the Distributor (each, an ''Affiliated Index Provider'')[7] will serve as the Index Provider. In the case of Self-Indexing Funds, an Affiliated Index Provider will create a proprietary, rules-based methodology to create Underlying Indexes (each an ''Affiliated Index'').[8] Except with respect to the Self-Indexing Funds, no Index Provider is or will be an Affiliated Person, or a Second-Tier Affiliate, of the Trust or a Fund, of the Adviser, of any Sub-Adviser to or promoter of a Fund, or of the Distributor.

10. Applicants recognize that Self-Indexing Funds could raise concerns regarding the ability of the Affiliated Index Provider to manipulate the Underlying Index to the benefit or detriment of the Self-Indexing Fund. Applicants further recognize the potential for conflicts that may arise with respect to the personal trading activity of personnel of the Affiliated Index Provider who have knowledge of changes to an Underlying Index prior to the time that information is publicly disseminated. Prior orders granted to self-indexing ETFs (''Prior Self-Indexing Orders'') addressed these concerns by creating a framework that required: (i) Transparency of the Underlying Indexes; (ii) the adoption of policies and procedures not otherwise required by the Act designed to mitigate such conflicts of interest; (iii) limitations on the ability to change the rules for index compilation and the component securities of the index; (iv) that the index provider enter into an agreement with an unaffiliated third party to act as ''Calculation Agent''; and (v) certain limitations designed to separate employees of the index provider, adviser and Calculation Agent (clauses (ii) through (v) are hereinafter referred to as ''Policies and Procedures'').[9]

11. Instead of adopting the same or similar Policies and Procedures, Applicants propose that each day that a Fund, the NYSE and the national securities exchange (as defined in section 2(a)(26) of the Act) (an ''Exchange'') on which the Fund's Shares are primarily listed (''Listing Exchange'') are open for business, including any day that a Fund is required to be open under section 22(e) of the Act (a ''Business Day''), each Self-Indexing Fund will post on its Web site, before commencement of trading of Shares on the Listing Exchange, the identities and quantities of the portfolio securities, assets, and other positions held by the Fund that will form the basis for the Fund's calculation of its NAV at the end of the Business Day (''Portfolio Holdings''). Applicants believe that requiring Self-Indexing Funds to maintain full portfolio transparency will provide an effective

available. No affiliated person of a Fund, the Adviser or any Sub-Adviser will serve as the depositary bank for any Depositary Receipts held by a Fund.

[4] Underlying Indexes that include both long and short positions in securities are referred to as ''Long/Short Indexes.''

[5] Under accounting procedures followed by each Fund, trades made on the prior Business Day (''T'') will be booked and reflected in NAV on the current Business Day (T+1). Accordingly, the Funds will be able to disclose at the beginning of the Business Day the portfolio that will form the basis for the NAV calculation at the end of the Business Day.

[6] The licenses for the Self-Indexing Funds will specifically state that the Affiliated Index Provider (or in case of a sub-licensing agreement, the Adviser) must provide the use of the Underlying Indexes and related intellectual property at no cost to the Trust and the Self-Indexing Funds.

[7] Currently ERNY Financial, Inc. is the only entity that will serve as Affiliated Index Provider. Any future entity that acts as Affiliated Index Provider will comply with the terms and conditions of the application.

[8] The Affiliated 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 for which the Adviser acts as adviser or subadviser (''Affiliated Accounts'') as well as other such registered investment companies, separately managed accounts and privately offered funds for which it does not act either as adviser or subadviser (''Unaffiliated Accounts''). The Affiliated Accounts and the Unaffiliated 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 Indexes or a representative sample of such constituents of the Underlying Index. Consistent with the relief requested from section 17(a), the Affiliated Accounts will not engage in Creation Unit transactions with a Fund.

[9] *See, e.g.,* In the Matter of WisdomTree Investments Inc., *et al.,* Investment Company Act Release Nos. 27324 (May 18, 2006) (notice) and 27391 (June 12, 2006) (order); In the Matter of IndexIQ ETF Trust, *et al.,* Investment Company Act Release Nos. 28638 (Feb. 27, 2009) (notice) and 28653 (March 20, 2009) (order); and Van Eck Associates Corporation, *et al., et al.,* Investment Company Act Release Nos. 29455 (Oct. 1, 2010) (notice) and 29490 (Oct. 26, 2010) (order).

alternative mechanism for addressing any such potential conflicts of interest.

12. Applicants represent that each Self-Indexing Fund's Portfolio Holdings will be as transparent as the portfolio holdings of existing actively managed ETFs. Applicants observe that the framework set forth in the Prior Self-Indexing Orders was established before the Commission began issuing exemptive relief to allow the offering of actively-managed ETFs.[10] Unlike passively-managed ETFs, actively-managed ETFs do not seek to replicate the performance of a specified index but rather seek to achieve their investment objectives by using an ''active'' management strategy. Applicants contend that the structure of actively managed ETFs presents potential conflicts of interest that are the same as those presented by Self-Indexing Funds because the portfolio managers of an actively managed ETF by definition have advance knowledge of pending portfolio changes. However, rather than requiring Policies and Procedures similar to those required under the Prior Self-Indexing Orders, Applicants believe that actively managed ETFs address these potential conflicts of interest appropriately through full portfolio transparency, as the conditions to their relevant exemptive relief require.

13. In addition, Applicants do not believe the potential for conflicts of interest raised by the Adviser's use of the Underlying Indexes in connection with the management of the Self Indexing Funds and the Affiliated Accounts will be substantially different from the potential conflicts presented by an adviser managing two or more registered funds. Both the Act and the Advisers Act contain various protections to address conflicts of interest where an adviser is managing two or more registered funds and these protections will also help address these conflicts with respect to the Self-Indexing Funds.[11]

14. The Adviser and any Sub-Adviser has adopted or will adopt, 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. These include policies and procedures designed to minimize potential conflicts of interest among the Self-Indexing Funds and the Affiliated Accounts, such as cross trading policies, as well as those designed to ensure the equitable allocation of portfolio transactions and brokerage commissions. In addition, the Adviser has adopted policies and procedures as required under section 204A of the Advisers Act, which are reasonably designed in light of the nature of its business to prevent the misuse, in violation of the Advisers Act or the Exchange Act or the rules thereunder, of material non-public information by the Adviser or an associated person (''Inside Information Policy''). Any Sub-Adviser will be required to adopt and maintain a similar Inside Information Policy. In accordance with the Code of Ethics [12] and Inside Information Policy of the Adviser and Sub-Advisers, personnel of those entities with knowledge about the composition of the Portfolio Deposit [13] will be prohibited from disclosing such information to any other person, except as authorized in the course of their employment, until such information is made public. In addition, an Index Provider will not provide any information relating to changes to an Underlying Index's methodology for the inclusion of component securities, the inclusion or exclusion of specific component securities, or methodology for the calculation or the return of component securities, in advance of a public announcement of such changes by the Index Provider. The Adviser will also include under Item 10.C. of Part 2 of its Form ADV a discussion of its relationship to any Affiliated Index Provider and any material conflicts of interest resulting therefrom, regardless of whether the Affiliated Index Provider is a type of affiliate specified in Item 10.

15. To the extent the Self-Indexing Funds transact with an Affiliated Person of the Adviser or Sub-Adviser, such transactions will comply with the Act, the rules thereunder and the terms and conditions of the requested order. In this regard, each Self-Indexing Fund's board of directors or trustees (''Board'') will periodically review the Self-Indexing Fund's use of an Affiliated Index Provider. Subject to the approval of the Self-Indexing Fund's Board, the Adviser, Affiliated Persons of the Adviser (''Adviser Affiliates'') and Affiliated Persons of any Sub-Adviser (''Sub-Adviser Affiliates'') may be authorized to provide custody, fund accounting and administration and transfer agency services to the Self-Indexing Funds. Any services provided by the Adviser, Adviser Affiliates, Sub-Adviser and Sub-Adviser Affiliates will be performed in accordance with the provisions of the Act, the rules under the Act and any relevant guidelines from the staff of the Commission.

16. In light of the foregoing, Applicants believe it is appropriate to allow the Self-Indexing Funds to be fully transparent in lieu of Policies and Procedures from the Prior Self-Indexing Orders discussed above.

17. The Shares of each Fund 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'').[14] 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 the Redemption Instruments will each correspond pro rata to the positions in the Fund's portfolio (including cash positions) [15] 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

[10] *See, e.g.,* In the Matter of Huntington Asset Advisors, Inc., *et al.,* Investment Company Act Release Nos. 30032 (April 10, 2012) (notice) and 30061 (May 8, 2012) (order); In the Matter of Russell Investment Management Co., *et al.,* Investment Company Act Release Nos. 29655 (April 20, 2011) (notice) and 29671 (May 16, 2011) (order); In the Matter of Eaton Vance Management, *et al.,* Investment Company Act Release Nos. 29591 (March 11, 2011) (notice) and 29620 (March 30, 2011) (order) and; In the Matter of iShares Trust, *et al.,* Investment Company Act Release Nos. 29543 (Dec. 27, 2010) (notice) and 29571 (Jan. 24, 2011) (order).

[11] *See, e.g.,* Rule 17j–1 under the Act and Section 204A under the Advisers Act and Rules 204A–1 and 206(4)–7 under the Advisers Act.

[12] The Adviser has also adopted or will adopt a code of ethics pursuant to Rule 17j–1 under the Act and Rule 204A–1 under the Advisers Act, which contains provisions reasonably necessary to prevent Access Persons (as defined in Rule 17j–1) from engaging in any conduct prohibited in Rule 17j–1 (''Code of Ethics'').

[13] The instruments and cash that the purchaser is required to deliver in exchange for the Creation Units it is purchasing is referred to as the ''Portfolio Deposit.''

[14] 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.

[15] The portfolio used for this purpose will be the same portfolio used to calculate the Fund's NAV for the Business Day.

differences when rounding is necessary to eliminate fractional shares or lots that are not tradeable round lots; [16] (c) TBA Transactions, short positions, derivatives and other positions that cannot be transferred in kind [17] will be excluded from the Deposit Instruments and the Redemption Instruments; [18] (d) to the extent the Fund determines, on a given Business Day, to use a representative sampling of the Fund's portfolio; [19] 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 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 ''Cash Amount'').

18. 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 Cash Amount; (b) if, on a given Business Day, the 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, the Fund determines to require the purchase or redemption, as applicable, to be made entirely in cash; [20] (d) if, on a given Business Day, the 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 (defined below); or (ii) in the case of Foreign Funds holding non-U.S. investments, such instruments are not eligible for trading due to local trading restrictions, local restrictions on securities transfers or other similar circumstances; or (e) if the 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 holding non-U.S. investments would be subject to unfavorable income tax treatment if the holder receives redemption proceeds in kind.[21]

19. Creation Units will consist of specified large aggregations of Shares, e.g., at least 25,000 Shares, and it is expected that the initial price of a Creation Unit will range from $750,000 to $10 million. All orders to purchase Creation Units must be placed with the Distributor by or through an ''Authorized Participant'' which is either (1) a ''Participating Party,'' i.e., a broker-dealer or other participant in the Continuous Net Settlement System of the NSCC, a clearing agency registered with the Commission, or (2) a participant in The Depository Trust Company (''DTC'') (''DTC Participant''), which, in either case, has signed a participant agreement with the Distributor. The Distributor will be responsible for transmitting the orders to the Funds and will furnish to those placing such orders confirmation that the orders have been accepted, but applicants state that the Distributor may reject any order which is not submitted in proper form.

20. Each Business Day, before the open of trading on the 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 Cash Amount (if any), for that day. The list of Deposit Instruments and Redemption Instruments will apply until a new list is announced on the following Business Day, and there will be no intra-day changes to the list except to correct errors in the published list. Each Listing Exchange will disseminate, every 15 seconds during regular Exchange trading hours, through the facilities of the Consolidated Tape Association, an amount for each Fund stated on a per individual Share basis representing the sum of (i) the estimated Cash Amount and (ii) the current value of the Deposit Instruments.

21. Transaction expenses, including operational processing and brokerage costs, will be incurred by a Fund when investors purchase or redeem Creation Units in-kind and such costs have the potential to dilute the interests of the Fund's existing shareholders. Each Fund will impose purchase or redemption transaction fees (''Transaction Fees'') in connection with effecting such purchases or redemptions of Creation Units. In all cases, such Transaction Fees will be limited in accordance with requirements of the Commission applicable to management investment companies offering redeemable securities. Since the Transaction Fees are intended to defray the transaction expenses as well as to prevent possible shareholder dilution resulting from the purchase or redemption of Creation Units, the Transaction Fees will be borne only by such purchasers or redeemers.[22] The Distributor will be responsible for delivering the Fund's prospectus to those persons acquiring Shares in 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.

22. 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 (each, a ''Market Maker'') and maintain a market for Shares trading on the Exchange. Prices of Shares trading on an

[16] A tradeable round lot for a security will be the standard unit of trading in that particular type of security in its primary market.

[17] 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.

[18] Because these instruments will be excluded from the Deposit Instruments and the Redemption Instruments, their value will be reflected in the determination of the Cash Amount (as defined below).

[19] A Fund may only use sampling for this purpose if the sample: (i) Is designed to generate performance that is highly correlated to the performance of the Fund's portfolio; (ii) consists entirely of instruments that are already included in the Fund's portfolio; and (iii) is the same for all Authorized Participants on a given Business Day.

[20] 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 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 consideration may warrant in-kind redemptions.

[21] 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).

[22] Where a Fund permits an in-kind purchaser to substitute cash-in-lieu of depositing one or more of the requisite Deposit Instruments, the purchaser may be assessed a higher Transaction Fee to cover the cost of purchasing such Deposit Instruments.

Exchange will be based on the current bid/offer market. Transactions involving the sale of Shares on an Exchange will be subject to customary brokerage commissions and charges.

23. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs. Market Makers, acting in their roles to provide a fair and orderly secondary market for the Shares, may from time to time find it appropriate to purchase or redeem Creation Units. Applicants expect that secondary market purchasers of Shares will include both institutional and retail investors.[23] The price at which Shares trade will be disciplined by arbitrage opportunities created by the option continually to purchase or redeem Shares in Creation Units, which should help prevent Shares from trading at a material discount or premium in relation to their NAV.

24. Shares will not be individually redeemable, and owners of Shares may acquire those Shares from the Fund, or tender such Shares for redemption to the Fund, in Creation Units only. To redeem, an investor must accumulate enough Shares to constitute a Creation Unit. Redemption requests must be placed through an Authorized Participant. A redeeming investor may pay a Transaction Fee, calculated in the same manner as a Transaction Fee payable in connection with purchases of Creation Units.

25. Neither the Trust nor any Fund will be advertised or marketed or otherwise held out as a traditional open-end investment company or a ''mutual fund.'' Instead, each such Fund will be marketed as an ''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 will disclose that the owners of Shares may acquire those Shares from the Fund or tender such Shares for redemption to the Fund in Creation Units only. The Funds will provide copies of their annual and semi-annual shareholder reports to DTC Participants for distribution to beneficial owners of Shares.

**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 section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act, and 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.

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 a 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. Applicants state that investors may purchase Shares in Creation Units and redeem Creation Units from each Fund. Applicants further state that because Creation Units may always be purchased and redeemed at NAV, the price of Shares on the secondary market should not vary materially from 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 an 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 of investment company shares by eliminating price competition from 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 a Fund as a party 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 price at which Shares trade will be disciplined by arbitrage opportunities created by the option continually to purchase or redeem Shares in Creation Units, which should help prevent Shares from trading at a

[23] Shares will be registered in book-entry form only. DTC or its nominee will be the record or registered owner of all outstanding Shares. Beneficial ownership of Shares will be shown on the records of DTC or the DTC Participants.

material discount or premium in relation to their NAV.

*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 state that settlement of redemptions for Foreign Funds will be contingent not only on the settlement cycle of the United States market, but also on current delivery cycles in local markets for underlying foreign Portfolio Securities held by a Foreign Fund. Applicants state that the delivery cycles currently practicable for transferring Redemption Instruments to redeeming investors, coupled with local market holiday schedules, may require a delivery process of up to fifteen (15) calendar days.[24] Accordingly, with respect to Foreign Funds only, Applicants hereby request relief under section 6(c) from the requirement imposed by section 22(e) to allow Foreign Funds to pay redemption proceeds within fifteen (15) calendar days following the tender of Creation Units for redemption.[25]

8. Applicants believe that Congress adopted section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds. Applicants propose that allowing redemption payments for Creation Units of a Foreign Fund to be made within fifteen calendar days would not be inconsistent with the spirit and intent of section 22(e). Applicants suggest that a redemption payment occurring within fifteen calendar days following a redemption request would adequately afford investor protection.

9. Applicants are not seeking relief from section 22(e) with respect to Foreign Funds that do not effect creations and redemptions of Creation Units in-kind.

*Section 12(d)(1)*

10. Section 12(d)(1)(A) of the Act 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 and any other broker-dealer from knowingly 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 registered management investment companies and unit investment trusts (''UITs'') that are not advised or sponsored by the Adviser, and not part of the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act as the Funds (such management investment companies are referred to as ''Investing Management Companies,'' such UITs are referred to as ''Investing Trusts,'' and Investing Management Companies and Investing Trusts are collectively referred to as ''Funds of Funds''), to acquire Shares beyond the limits of section 12(d)(1)(A) of the Act; and the Funds, and any principal underwriter for the Funds, and/or any Broker registered Exchange Act, to sell Shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act.

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 investment advisers within the meaning of section 2(a)(20)(B) of the Act (each a ''Fund of Funds Sub-Adviser''). Any investment adviser to an Investing Management Company will be registered under the Advisers Act. Each Investing Trust will be sponsored by a sponsor (''Sponsor'').

13. Applicants submit that the proposed conditions to the requested relief adequately address the concerns underlying the limits in sections 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 a Fund of Funds nor a Fund of Funds Affiliate would be able to exert undue influence over a Fund.[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 Sponsor, any person controlling, controlled by, or under common control with a Fund of Funds Adviser or Sponsor, and any investment company and any issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by a Fund of Funds Adviser or Sponsor, or any person controlling, controlled by, or under common control with a 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 sections 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'').

15. 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 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 or Fund of Funds Sub-Adviser, employee or Sponsor is an affiliated person (except that any person whose

[24] Certain countries in which a Fund may invest have historically had settlement periods of up to fifteen (15) calendar days.

[25] Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations Applicants may otherwise have under rule 15c6–1 under the Exchange Act requiring that most securities transactions be settled within three business days of the trade date.

[26] A ''Fund of Funds Affiliate'' is a 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 an investment adviser, promoter, or principal underwriter of a Fund and any person controlling, controlled by or under common control with any of these entities.

relationship to the Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate).

16. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. The board of directors or trustees of any Investing Management Company, including a majority of the directors or trustees who are not ''interested persons'' within the meaning of section 2(a)(19) of the Act (''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 in which the Investing 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 the 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 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.[27]

17. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that no Fund will acquire 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 to purchase shares of other investment companies for short-term cash management purposes. To ensure a Fund of Funds is aware of the terms and conditions of the requested order, the Fund of Funds will enter into an agreement with the Fund (''FOF Participation Agreement''). The FOF Participation Agreement will include an acknowledgement 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 in Creation Units 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 any initial investment by a Fund of Funds in excess of the limits of section 12(d)(1)(A) by declining to enter into a FOF Participation Agreement with the Fund of Funds.

*Sections 17(a)(1) and (2) of the Act*

19. Sections 17(a)(1) and (2) of the Act generally prohibit an affiliated person of a registered investment company, or an affiliated person of such a person, from selling any security to or purchasing any security 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, (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with the power to vote by 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 or policies of a company, and 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 or an entity controlling, controlled by or under common control with 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 an Adviser or an entity controlling, controlled by or under common control with an Adviser (an ''Affiliated Fund''). Any investor, including Market Makers, owning 5% or holding in excess of 25% of the Trust or such Funds, may be deemed affiliated persons of the Trust or such Funds. In addition, an investor could own 5% or more, or in excess of 25% of the outstanding shares of one or more Affiliated Funds making that investor a Second-Tier Affiliate of the Funds.

20. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act pursuant to sections 6(c) and 17(b) of the Act to permit persons that are Affiliated Persons of the Funds, or Second-Tier Affiliates of the Funds, solely by virtue of one or more of the following: (a) Holding 5% or more, or in excess of 25%, of the outstanding Shares of one or more Funds; (b) 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, to effectuate purchases and redemptions ''in-kind.''

21. Applicants assert that no useful purpose would be served by prohibiting such affiliated persons from making ''in-kind'' purchases or ''in-kind'' redemptions of Shares of a Fund in Creation Units. Both the deposit procedures for ''in-kind'' purchases of Creation Units and the redemption procedures for ''in-kind'' redemptions of Creation Units will be effected in exactly the same manner for all purchases and redemptions, regardless of size or number. There will be no discrimination between purchasers or redeemers. Deposit Instruments and Redemption Instruments for each Fund will be valued in the identical manner as those Portfolio Securities currently held by such Fund and the valuation of the Deposit Instruments and Redemption Instruments will be made in an identical manner regardless of the identity of the purchaser or redeemer. Applicants do not believe that ''in-kind'' purchases and redemptions will result in abusive self-dealing or overreaching, but rather assert that such procedures will be implemented consistently with each Fund's objectives and with the general purposes of the Act. Applicants believe that ''in-kind'' purchases and redemptions will be made on terms reasonable to Applicants and any affiliated persons because they will be valued pursuant to verifiable objective standards. The method of valuing Portfolio Securities held by a Fund is identical to that used for calculating ''in-kind'' purchase or redemption values and therefore creates no opportunity for affiliated persons or Second-Tier Affiliates of Applicants to effect a transaction detrimental to the other holders of Shares of that Fund. Similarly, Applicants submit that, by using the same standards for valuing Portfolio Securities held by a Fund as are used for calculating ''in-kind'' redemptions or purchases, the Fund will ensure that its NAV will not be adversely affected by such securities transactions. Applicants also note that the ability to take deposits and make redemptions ''in-kind'' will help each Fund to track closely its Underlying Index and therefore aid in achieving the Fund's objectives.

[27] Any references to NASD Conduct Rule 2830 include any successor or replacement FINRA rule to NASD Conduct Rule 2830.

22. Applicants also seek relief under sections 6(c) and 17(b) from section 17(a) to permit a Fund that is an affiliated person, or an affiliated person of an affiliated person, 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 that the terms of the transactions are fair and reasonable and do 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.[29] Applicants believe that any proposed transactions directly between the Funds and Funds of Funds will be consistent with the policies of each Fund of Funds. The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the investment restrictions of any such Fund of Funds and will be consistent with the investment policies set forth in the Fund of Funds' registration statement. Applicants also state that the proposed transactions are consistent with the general purposes of the Act and are appropriate in the public interest.

**Applicants' Conditions**

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

*A. ETF Relief*

1. The requested relief to permit ETF operations 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 requested order, Shares of such Fund will be listed on an Exchange.

3. Neither the Trust nor any Fund will be advertised or marketed as an open-end investment company or a 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, 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 midpoint of the bid/ask spread at the time of the calculation of such NAV (''Bid/Ask Price''), and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV.

5. Each Self-Indexing Fund, Long/Short Fund and 130/30 Fund will post on the Web site on each Business Day, before commencement of trading of Shares on the Exchange, the Fund's Portfolio Holdings.

6. No Adviser or any Sub-Adviser, directly or indirectly, will cause any Authorized Participant (or any investor on whose behalf an Authorized Participant may transact with the Fund) to acquire any Deposit Instrument for a Fund through a transaction in which the Fund could not engage directly.

*B. Section 12(d)(1) Relief*

1. The members of a Fund of Funds' Advisory Group will not control (individually or in the aggregate) a 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 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 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 a Fund Affiliate.

3. The board of directors or trustees of an Investing Management Company, including a majority of the disinterested 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 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 limits in section 12(d)(1)(A)(i) of the Act, the Board of the Fund, including a majority of the directors or trustees who are not ''interested persons'' within the meaning of Section 2(a)(19) of the Act (''non-interested Board members''), will determine that any consideration paid by the 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; (ii) is within the range of consideration that the 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 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 under rule 12b–l under the Act) received from a 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

[28] Although applicants believe that most Funds of Funds will purchase Shares in the secondary market and will not purchase Creation Units directly from a Fund, a Fund of Funds might seek to transact in Creation Units directly with a Fund that is an affiliated person of a Fund of Funds. To the extent that purchases and sales of Shares occur in the secondary market and not through principal transactions directly between a Fund of 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. 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 an affiliated person of an affiliated person of a Fund of Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

[29] Applicants acknowledge that the 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 of a Fund 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.

to the Fund of Funds Adviser, trustee or Sponsor of an Investing Trust, or its affiliated person by the 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 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, 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) will cause a Fund to purchase a security in any Affiliated Underwriting.

7. The Board of a Fund, including a majority of the non-interested Board members, will adopt procedures reasonably designed to monitor any purchases of securities by the 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; (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 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 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 limit 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 disinterested 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 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 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 the Fund acquires securities of another investment company pursuant to exemptive relief from the Commission permitting the Fund to acquire securities of one or more investment companies for short-term cash management purposes.

For the Commission, by the Division of Investment Management, under delegated authority.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–18763 Filed 8–2–13; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, August 8, 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 her designee, has certified that, in her 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 Walter, 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;

Adjudicatory matters; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: August 1, 2013.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–18933 Filed 8–1–13; 4:15 pm]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–70076; File No. SR–OCC–2013–09]**

## Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change, as Modified by Amendment No. 1, To Separate the Powers and Duties Currently Combined in the Office of OCC's Chairman Into Two Offices, Chairman and President, and Create an Additional Directorship To Be Occupied by the President

July 30, 2013.

### I. Introduction

On June 4, 2013 The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–OCC–2013–09 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder.[2] On June 10, 2013, OCC filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on June 21, 2013.[4] The Commission received no comment letters. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

### II. Description

The purpose of this rule change is to provide for separation of the powers and duties currently combined in the office of OCC's Chairman of the Board of Directors into two offices, Chairman [5] and President, and create an additional directorship to be occupied by the President.

*Proposal Overview*

In the course of OCC's review of the structure of the Board of Directors, OCC determined that dividing the powers and duties of the Chairman of the Board into two positions, Chairman and President, would enhance oversight of OCC management by making the Chairman independent of most management functions. Pursuant to the rule change, the Chairman will be responsible for oversight of: (i) The control functions of OCC, including enterprise risk management, internal audit and compliance; (ii) external affairs; and (iii) presiding at all meetings of OCC's Board of Directors and OCC's stockholders. The President will report to the Chairman and be responsible for all aspects of OCC's business that do not report directly to the Chairman. Under OCC's rule change, OCC's President, who will also serve as Chief Executive Officer, will focus on the effectiveness of OCC's day-to-day operations, as well as strategic initiatives for the future.

OCC expects that the Chairman's direct oversight of control functions will increase independence by limiting management's influence over such functions. In addition, OCC notes that the significance of these control functions for a clearing agency warrants full-time oversight, which can only be provided by an executive of OCC.

To reflect the above changes in its governance structure, OCC will revise Section 7 of Article III of its By-Laws to include OCC's President as a Management Director, along with OCC's Chairman.[6] OCC will also revise Article IV of its By-Laws to include references to the President in certain provisions governing OCC's officers.[7] OCC will also amend Articles IV and V of its Certificate of Incorporation to reflect the existence of an additional Management Director. Finally, OCC will also amend Sections 2 and 3 of the Stockholders Agreement to provide for the election of the President, in addition to the Chairman, as a Management Director.

*Implementation Timeframe*

OCC will notify members of the date on which it intends to implement the rule change through the posting of an information memo on the OCC Web site. The change will not take effect until such date OCC designates as the date of implementation. OCC expects to implement the rule change no later than December 31, 2013.

### III. Discussion

Section 19(b)(2)(C) of the Act [8] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(A) of the Act [9] requires that a clearing agency that is registered with the Commission be organized and have the capacity to be able to, among other things, facilitate the prompt and accurate clearance and settlement of securities transactions.

The Commission finds that the rule change is consistent with Section 17A(b)(3)(A) of the Act [10] because by separating the powers and duties currently combined in the office of OCC's Chairman into two offices, the rule change should enhance oversight of management by ensuring that the Chairman is independent of most management functions and that the separation of powers and duties over OCC operations is not overly concentrated in the hands of a single individual, thereby promoting greater accountability of management to the Board of Directors. In so doing, OCC's rule change should improve its corporate governance structure and provide for an appropriate checks and balance between oversight by OCC's Board of Directors and OCC management of day-to-day operations, which in turn, should facilitate the prompt and accurate clearance and settlement of securities transactions.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 corrects an administrative oversight related to a sentence reference in OCC's Certificate of Incorporation.

[4] Release No. 34–69771 (June 17, 2013), 78 FR 37640 (June 21, 2013).

[5] Pursuant to Article IV, Section 6, of OCC's By-Laws, the Chairman of the Board is also the Executive Chairman.

[6] Sections 1, 7 and 12 of Article III will also be amended to reflect the existence of an additional Management Director. Furthermore, OCC will amend Section 15 of Article III to grant the President the same authority to act in the case of an emergency as the Chairman and, consequently, OCC will remove the President as one of the ''Designated Officers'' to whom such authority would devolve if certain enumerated officers are unavailable.

[7] The amended Section 1 of Article IV will include the President, along with the Chairman, as an officer required to be elected by the Board of Directors. Section 8 of Article IV, as amended, will no longer give the Board the option of electing a President, but will make such office required. Sections 6 and 8 of Article IV will be amended to specify the duties of the Chairman and President, respectively. Sections 2, 3, and 13 of Article IV will be amended to give the President power, like the Chairman, to appoint and remove certain officers and agents to carry out the functions assigned to him and may determine the salaries of these appointees and agents. Sections 7 and 9 will be amended to add references to the President, in addition to the Chairman, when referencing the highest-ranking officers of OCC.

[8] 15 U.S.C. 78s(b)(2)(C).

[9] 15 U.S.C. 78q–1(b)(3)(A).

[10] *Id.*

## IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act[11] and the rules and regulations thereunder.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (File No. SR–OCC–2013–09) be and hereby is APPROVED.[13]

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[14]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–18761 Filed 8–2–13; 8:45 am]

**BILLING CODE 8011–01–P**

[11] 15 U.S.C. 78q–1.

[12] 15 U.S.C. 78s(b)(2).

[13] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–70065; File No. SR–NYSEMKT–2013–64]**

## Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Modifying the Content of the NYSE MKT Trades Digital Media Data Feed

July 30, 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 July 18, 2013, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to revise the description of the NYSE MKT Trades Digital Media data feed. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change*

1. Purpose

The Exchange proposes to revise the description of the NYSE MKT Trades Digital Media data feed.

In 2010, the Securities and Exchange Commission (''Commission'') approved the NYSE MKT Trades data feed and certain fees for it.[4] NYSE MKT Trades is a NYSE MKT-only market data feed that allows a vendor to redistribute on a real-time basis the same last sale information that the Exchange reports under the Consolidated Tape Association (''CTA'') Plan for inclusion in the CTA Plan's consolidated data streams and certain other related data elements. Specifically, NYSE MKT Trades includes the real-time last sale price, time, size, and bid/ask quotations for each security traded on the Exchange and a stock summary message. The stock summary message updates every minute and includes NYSE MKT's opening price, high price, low price, closing price, and cumulative volume for the security.

In April 2013, the Exchange began offering a new version of NYSE MKT Trades called ''NYSE MKT Trades Digital Media,'' which was described as including the real-time last sale price, time, size, and stock summary message for each security traded on the Exchange, but not including access to the bid/ask quotation included with the NYSE MKT Trades product.[5] At that time, the Exchange believed that it could efficiently remove the bid/ask information from the feed but has since determined that the time and resources required to do so would be significant and not commensurate with the need for the change. As such, the NYSE MKT Trades Digital Media product is offered with the bid/ask component included, and as such does not have different content than the regular NYSE MKT Trades data fee. The only difference between the products is the permitted distribution channels. NYSE MKT Trades Digital Media permits market data vendors, television broadcasters, Web site and mobile device service providers, and others to distribute the data product to their customers for viewing via television, Web site, and mobile devices. They are not be [sic] permitted to provide NYSE MKT Trades Digital Media in a context in which a trading or order routing decision can be implemented unless CTA data is available in an equivalent manner, must label the products as NYSE MKT-only data, and must provide a hyperlinked notice similar to the one provided for CTA delayed data. These restrictions do not apply to the NYSE MKT Trades product.

No other changes to the data components, terms, or pricing of any product are proposed.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[6] of the Act, in general, and furthers the objectives of Section 6(b)(5)[7] of the Act, in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and it is not designed to permit unfair discrimination among customers, brokers, or dealers.

The Exchange offers the NYSE MKT Trades Digital Media data product in recognition of the demand for a more seamless and easier-to-administer data distribution model that takes into account the expanded variety of media and communication devices that investors utilize today. As described above, the Exchange has determined that the expense of creating and monitoring a new feed without the bid-ask element is not warranted. No other

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 62187 (May 27, 2010), 75 FR 31500 (June 3, 2010) (SR–NYSEAmex–2010–35).

[5] *See* Securities Exchange Act Release No. 69273 (Apr. 2, 2013), 78 FR 20969 (Apr. 8, 2013) (SR–NYSEMKT–2013–30).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

aspect of the NYSE MKT Trades or NYSE MKT Trades Digital Media offering is being changed.

In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to consumers of such data. It was believed that this authority would expand the amount of data available to users and consumers of such data and also spur innovation and competition for the provision of market data. The Exchange believes that the data products proposed herein are precisely the sort of market data products that the Commission envisioned when it adopted Regulation NMS. The Commission concluded that Regulation NMS—by lessening regulation of the market in proprietary data

> [E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.[8]

By removing ''unnecessary regulatory restrictions'' on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history.

The Exchange further notes that the existence of alternatives to the Exchange's products, including real-time consolidated data, free delayed consolidated data, and proprietary data from other sources, ensures that the Exchange is not unreasonably discriminatory because vendors and subscribers can elect these alternatives. In addition, the proposal would not permit unfair discrimination because the product will be available to all of the Exchange's vendors and customers on an equivalent basis.

*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 market for proprietary data products is currently competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary data is produced by each individual exchange, as well as other entities (such as internalizing broker-dealers and various forms of alternative trading systems, including dark pools and electronic communication networks), in a vigorously competitive market. It is common for market participants to further and exploit this competition by sending their order flow and transaction reports to multiple markets, rather than providing them all to a single market.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2013–64 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–2013–64. 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 NYSE MKT. 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–2013–64 and should be submitted on or before August 26, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–18753 Filed 8–2–13; 8:45 am]

BILLING CODE 8011–01–P

[8] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (File No. S7–10–04).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires 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.

[11] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–70060; File No. SR–C2–2013–027]**

## Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Amending Exchange Rules To Clarify Rules 6.1 and 6.32

July 30, 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 July 17, 2013, C2 Options Exchange, Incorporated (the ''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to change its rules to clarify when it will be open for trading along with when trading halts on underlying securities will inhibit trading on the Exchange. 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's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange is proposing to change its rules to clarify when it will be open for trading along with when trading halts on underlying securities will inhibit trading on the Exchange. The Exchange is proposing to amend its rules to clarify that it will not be solely dependent upon the ''primary market'' when determining when to open and/or halt securities. Instead, the Exchange is proposing to clarify in its rules that it will be open if there is ample liquidity in the underlying market for that security. Generally, the national equity exchanges have similar core business hours.[3] With this proposal, the Exchange is attempting to clarify in its rules that it can remain open to trade options during such business hours even if the ''primary market'' of the underlying securities is not open for business. The Exchange believes that the proposed changes will allow the markets [sic] to continue to function in an instance where all exchanges may not be open. In addition, the Exchange believes the proposed changes will bring greater clarity to its Trading Permit Holders (''TPHs'') regarding when the Exchange will be open for trading.

First, the Exchange is proposing to add language to Rule 6.1.01 to specify that the Exchange will not solely rely on the ''primary market'' of an underlying security to determine whether the Exchange may trade the option for such security. The Exchange believes that the proposed rule change will specify that if there is an ample market in the underlying security, the Exchange has the authority to trade the option even if the primary market is not open. The Exchange believes that allowing such discretion will create a lesser market disruption if the primary exchange is unable to open for trading.

Next, Exchange Rule 6.32 specifies when the Exchange may halt trading.[4] Specifically, Rule 6.32(a) lists factors that may be considered by the Exchange when making that determination. Currently, Rule 6.32(a)(1) lists, as a factor in the decision with respect to options, ''trading in the underlying security has been halted or suspended in the primary market.'' The Exchange is proposing to add language to state, instead of the ''primary market,'' that the Exchange may factor in if ''trading in the underlying security has been halted or suspended in one or more of the markets trading the underlying security.''

The Exchange believes the proposed changes will allow the Exchange to trade options for underlying stocks even if that underlying listing market shall be unable to trade due to an emergency or other circumstance unique to that stock exchange. Making these proposed changes will allow the Exchange to trade options when an underlying security is trading on any national securities exchange regardless of where that security is formally listed. The proposed discretion attempts to create a lessor market disruption if a listing or primary market is unable to trade due to some circumstance. Because of the connectivity of the national securities exchanges today, the Exchange believes limiting its ability to trade options to when the primary market of the underlying security is open might hurt investors if some circumstance should render the primary exchange inoperable. In addition, the Exchange believes that the reference to ''primary market'' is ambiguous and has the potential to cause confusion. Thus, the Exchange believes by further clarifying the language, it is clearer when the Exchange will be open for trading.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[5] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[6] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[7] requirement that the rules of an exchange not be designed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See,* e.g., New York Stock Exchange Rule 51(a) and Bats Exchange Rule 1.5(w) which describes regular trading hours as 9:30 a.m. through 4:00 p.m. Eastern.

[4] *See* Exchange Rule 6.32.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] *Id.*

to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the proposed rule change protects investors by allowing trading in options as long as the underlying security is trading on another exchange. Instead of relying on the ''primary market,'' the proposed rule change attempts to clarify when options will trade on the Exchange to allow greater continuity in the marketplace. By allowing the Exchange to trade options whenever the underlying securities are trading, the proposed changes seek to create less of a disconnect if the ''primary'' market should be experiencing technical difficulties, an emergency, or situation that may inhibit it to be connected to the marketplace.

*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 the proposed rule change imposes any burden on intramarket competition because it is applied to all TPHs. In addition, the Exchange does not believe the proposed rule change will impose any burden on intermarket competition as it will merely give the Exchange discretion to trade options when there is an ample market for the underlying security of those options. Thus, the Exchange believes the proposed rule change will promote competition by giving the Exchange the ability to trade options when the underlying security is trading anywhere, and, thus, helping the Exchange to better participate in the marketplace.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [8] and Rule 19b–4(f)(6) [9] 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–C2–2013–027 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–C2–2013–027. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–C2–2013–027 and should be submitted on or before August 26, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–18748 Filed 8–2–13; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–70068; File No. SR–FICC–2013–06]**

## Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving Proposed Rule Change To Extend the Pilot Program for Certain Government Securities Division Rules Relating to the GCF Repo® Service

July 30, 2013.

On June 5, 2013, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–FICC–2013–06 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder.[2] The proposed rule change was published for comment in the **Federal Register** on June 21, 2013.[3] The Commission received no comments on the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

**I. Description of the Proposed Rule Change**

FICC seeks the Commission's approval to extend the pilot program that is currently in effect for the GCF

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 69653 (May 29, 2013), 78 FR 33456 (June 4, 2013) (SR–FICC–2013–05).

Repo® service (''2012 Pilot Program''). FICC requests that the 2012 Pilot Program be extended for one year following the Commission's approval of this filing.[4]

*A. The GCF Repo® Service*

The GCF Repo® service allows dealer members of FICC's Government Services Division to trade general collateral repos[5] (''GCF'') throughout the day without requiring intraday, trade-for-trade settlement on a delivery-versus-payment (''DVP'')[6] basis. The service allows dealers to trade general collateral repos, based on rate and term, with inter-dealer broker netting members on a blind basis. Standardized, generic CUSIP numbers have been established exclusively for GCF Repo processing, and are used to specify the type of underlying security that is eligible to serve as collateral for GCF Repos. Only Fedwire eligible, book-entry securities may serve as collateral for GCF repos. Acceptable collateral for GCF repos include most U.S. Treasury securities, non-mortgage-backed federal agency securities, fixed and adjustable rate mortgage-backed securities, Treasury Inflation-Protected Securities (''TIPS'') and separate trading of registered interest and principal securities (''STRIPS'').[7]

*B. Background of the Pilot Program*

Because FICC's GCF Repo service operates as a tri-party mechanism, FICC was asked to alter the service to align it with the recommendations of the Tri-Party Repo Infrastructure Reform Task Force (''TPR'').[8] FICC consequently developed a pilot program (''2011 Pilot Program'') to address the TPR's recommendations,[9] and sought Commission approval to institute that program.[10] The Commission approved the 2011 Pilot Program on August 29, 2011 for a period of one year.[11] When the expiration date for the 2011 Pilot Program approached, FICC sought Commission approval to implement the 2012 Pilot Program, which continued the 2011 Pilot Program in some aspects, and modified it in others.[12] On August 8, 2012, the Commission approved the 2012 Pilot Program for a period of one year.[13]

*C. The 2012 Pilot Program*

The 2012 Pilot Program has been the subject of a number of notices and approval orders published by the Commission,[14] many of which provide extensive detail on both the GCF Repo® service and the pilot program itself. Under this proposed rule change, FICC is not proposing to alter the 2012 Pilot Program in any way; rather, it proposes only to extend that program, as approved in 2012, for one additional year.[15]

[4] FICC has represented that, if it determines to change the parameters of the service during the one-year extension period, it will file a proposed rule change with the Commission. FICC has further warranted that, if it seeks to extend the 2012 Pilot Program beyond the one-year extension period or proposes to make the program permanent, it will also file a proposed rule change with the Commission.

[5] A general collateral repo is a repo in which the underlying securities collateral is nonspecific, general collateral whose identification is at the option of the seller. This is in contrast to a specific collateral repo.

[6] Delivery-versus-payment is a settlement procedure in which the buyer's cash payment for the securities it has purchased is due at the time the securities are delivered.

[7] *See* Securities Exchange Act Release No. 58696 (September 30, 2008), 73 FR 58698–03, 58699 (October 7, 2008) (SR–FICC–2008–04).

[8] The TPR was an industry group formed and sponsored by the Federal Reserve Bank of New York in 2009 to address weaknesses that emerged in the tri-party repo market during the financial crisis. The TPR's chief goal was to develop recommendations to address the risks presented by the reversal of tri-party repo transactions, and to develop procedures to ensure that tri-party repos would be collateralized throughout the day, rather than at the end of the day.

[9] The TPR issued preliminary and final reports setting forth its recommendations for the reform of the tri-party repo market. *See* Tri-Party Repo Infrastructure Reform Task Force Report of May 17, 2000, *available at http://www.newyorkfed.org/prc/files/report_100517.pdf; see also* Tri-Party Repo Reform Infrastructure Task Force Final Report (February 15, 2012), *available at http://www.newyorkfed.org/tripartyrepo/pdf/report_120215.pdf.*

[10] Securities Exchange Act Release No. 64955 (July 25, 2011), 76 FR 45638 (July 29, 2011) (FICC–2011–05).

[11] Securities Exchange Act Release No. 65213 (August 29, 2011), 76 FR 54824 (September 2, 2011) (SR–FICC–2011–05).

[12] The 2012 Pilot Program implemented several changes which, although described in the rule filing that accompanied the 2011 Pilot Program, were not implemented during the 2011 Pilot Program's period of effectiveness. They include: (i) Moving the time for unwinding repos from 7:30 a.m. to 3:30 p.m.; (ii) moving the net-free-equity process from morning to the evening; and (iii) establishing rules for intraday GCF Repo collateral substitutions. *See* Securities Exchange Act Release No. 67277 (June 20, 2012), 77 FR 38108, 38111 (June 26, 2012) (SR–FICC–2012–05).

[13] Securities Exchange Release No. 67621 (August 8, 2012), 77 FR 48572 (August 14, 2012) (SR–FICC–2012–05).

[14] *See* Securities Exchange Act Release Nos. 67277 (June 20, 2012), 77 FR 38108, 38109–12 (June 26, 2012) (SR–FICC–2012–05); 67621 (August 8, 2012), 77 FR 48572, 48573–76 (August 14, 2012) (SR–FICC–2012–05); and 69774 (June 17, 2013), 78 FR 37631, 37632–35 (June 21, 2013) (SR–FICC–2013–06).

[15] FICC would be required to file a proposed rule change with the Commission pursuant to Section 19(b) of the Act if were to do any of the following: (i) Change the parameters of the GCF Repo® service during the one-year extension period, (ii) extend the Pilot Program beyond the one-year period extension period, or (iii) establish the 2012 Pilot Program as a permanent program.

## II. Discussion

Section 19(b)(2)(C) of the Act[16] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(F) of the Act[17] requires, among other things, that the rules of a clearing agency be designed to achieve several goals, including (i) promoting the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, (ii) assuring the safeguarding of securities and funds that are in the custody or control of the clearing agency or for which it is responsible, and (iii) protecting investors and the public interest.

The Commission concludes that extending the 2012 Pilot Program for one additional year is consistent with the requirements of the Act and the rules and regulations thereunder. The 2012 Pilot Program furthers the Act's goals because it helps attenuate the substantial risks confronting the tri-party repo market, particularly those risks associated with the provision of intraday credit to market participants.[18] The Commission believes that extending the 2012 Pilot Program will ensure that these risks remain subject to more stringent controls and that this, in turn, will help promote the prompt and accurate clearance and settlement of securities transactions. The Commission further believes that, by requiring tri-party repos to remain collateralized for a longer period each day, the 2012 Pilot Program helps to assure the safety of the securities and funds within FICC's control, or for which it is responsible.[19]

## III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, particularly those set forth in Section 17A,[20] and the rules and regulations thereunder.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[21] that the

[16] 15 U.S.C. 78s(b)(2)(C).

[17] 15 U.S.C. 78q–1(b)(3)(F).

[18] The TPR characterized the ''practical elimination'' of this intraday credit as its ''first and most significant . . . recommendation.'' *See* Tri-Party Repo Infrastructure Reform Task Force Final Report, 4 (February 15, 2012), *available at http://www.newyorkfed.org/tripartyrepo/pdf/report_120215.pdf.*

[19] *See* 15 U.S.C. 78q–1(b)(3)(F).

[20] 15 U.S.C. 78q–1.

[21] 15 U.S.C. 78s(b)(2).

proposed rule change (File No. SR–FICC–2013–06) be, and hereby is, *approved.*[22]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–18756 Filed 8–2–13; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–70075; File No. SR–NYSEArca–2013–75]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Equities Rule 7.31(a)(2) To Specify That the Exchange Would Use The Last Official Closing Price To Calculate the Market Order Trading Collar If There Is No Consolidated Last Sale Price That Trading Day

July 30, 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 July 18, 2013, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Equities Rule 7.31(a)(2) to specify that the Exchange would use the last official closing price to calculate the market order trading collar if there is no consolidated last sale price that trading day. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange is proposing to amend NYSE Arca Equities Rule 7.31(a)(2) to specify that the Exchange would use the last official closing price to calculate the market order trading collar (''Trading Collar'') if there is no consolidated last sale price on that trading day. Pursuant to Rule 7.31(a)(1), during Core Trading Hours,[4] a market order to buy (sell) will not execute or route to another market center at a price above (below) the Trading Collar. Trading Collars are based on a price that is a specified percentage away from the consolidated last sale price, which can be a price either reported on the Consolidated Tape or the UTP Trade Data Feed, depending on which market the security is listed. The upper boundary of the Trading Collar is calculated by increasing the consolidated last sale price by a specific percentage, and the lower boundary is calculated by decreasing the consolidated last sale price by the same specified percentage.

In thinly-traded securities, there may not be a consolidated last sale price available for a security that trading day. Currently, if this occurs, the Exchange does not calculate a Trading Collar until there is a consolidated last during Core Trading Hours, which means that the first execution of a market order at the Exchange may not be subject to a Trading Collar.

The Exchange proposes to amend Rule 7.31(a)(2) to specify that if there is no consolidated last sale price on the same trading day, the Exchange would use the last official closing price for the security. The Exchange proposes to make this change to assure that there will be a Trading Collar available for all executions of market orders at the Exchange, even if an execution has not yet been reported for a security that day.

As proposed, the Exchange could use a consolidated last sale price that is reported to the Consolidated Tape or the UTP Trade Data Feed before Core Trading Hours begin that day. For example, assume XYZ security, a thinly-traded security, had an official closing price on Day 1 of $10.00. On Day 2, a trade is reported to the Consolidated Tape in XYZ security at 5:30 a.m. Eastern for $10.01, but there are no additional trades in XYZ during Core Trading Hours. Accordingly, as proposed, on Day 2, the Exchange would use the $10.01 consolidated last sale price as the reference price for calculating the Trading Collar for XYZ, and not the $10.00 official last close. If there are no further trades on Day 2 and no trades on Day 3, on Day 3, the Exchange would use the Day 1 official closing price to calculate the Trading Collar, and not the Day 2 pre-Core Trading Hours execution of $10.01. The Exchange believes that it is appropriate to use an execution that may occur on the same day in the pre-Core Trading Hours as the reference price because it may be reflective of the current price of the security. However, if there are no further transactions in the security that day or on the next day(s), the Exchange believes that the last official closing price is more indicative of the true value of the security and should be used as the reference price.

The Exchange would not use a consolidated last sale price that is reported after the official closing price for the prior day. For example, if XYZ had an official closing price on Day 1 of $10.00 and an execution reported to the Consolidated Tape at 5:30 p.m. Eastern of $10.01, and no trades on Day 2, the Exchange would use the $10.00 closing price as the reference price for calculating the Trading Collar for XYZ.

The Exchange also proposes to amend Rule 7.31(a)(1) to clarify that Trading Collars are available for the Market Order Auction. Because the Market Order Auction occurs during Core Trading Hours,[5] the Exchange believes that it is implied in the rule that the Trading Collars are also applicable during the Market Order Auction. However, in the interest of full

[22] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[23] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* NYSE ARca Equities Rule 1.1(j) (defining ''Core Trading Hours'' as the hours of 6:30 a.m. to 1:00 p.m. (Pacific Time)).

[5] Pursuant to NYSE Arca Equities Rule 7.34(a)(1), the Market Order Auction occurs during the Exchange's Opening Session. However, because the Market Order Auction occurs no earlier than 9:30:00 a.m. Eastern, although it is part of the Opening Session, it takes place during what are defined as Core Trading Hours pursuant to Rule 1.1(j).

transparency, the Exchange proposes to specify that Trading Collars are applicable for the Market Order Auction.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Securities Exchange Act of 1934 (the ''Act''),[6] 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 meets these requirements in that it ensures that the Exchange will be able to calculate and apply a Trading Collar for all incoming market orders, including when there has not yet been an execution during Core Trading Hours in a security. The Exchange believes that using the last official closing price for calculating the market order Trading Collar removes impediments to and perfects the mechanism of a free and open market and protects investors and the public interest because the last official closing price represents the most accurate indication of the price at which a security may be trading. The Exchange notes that the official closing price of a security is used for other purposes, such as calculating the Trigger Price pursuant to Rule 7.16, in compliance with Rule 201 of Regulation SHO.

*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 the proposed amendment will not impose any burdens on competition because the proposal would simply provide for a manner to calculate market order Trading Collars for situations when there is no consolidated last sale price in a security.

*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.

[6] 15 U.S.C. 78f(b)(5).

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[9] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[10] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

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)[11] 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–NYSEArca–2013–75 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2013–75. This file number should be included on the subject line if email is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of NYSE. 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–NYSEArca–2013–75, and should be submitted on or before August 26, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–18760 Filed 8–2–13; 8:45 am]

**BILLING CODE 8011–01–P**

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] 15 U.S.C. 78s(b)(2)(B).

[12] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–70069; File No. SR–MIAX–2013–36]**

## Self-Regulatory Organizations: Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX Fee Schedule

July 30, 2013.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 22, 2013, Miami International Securities Exchange LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a 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 is filing a proposal to amend its Fee Schedule.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.miaxoptions.com/filter/wotitle/rule_filing,* at MIAX's principal office, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 extend its current waiver of all transaction fees in Section 1(a)(i) of the MIAX Options Fee Schedule (the ''fee waiver'') that apply to Market Makers[3] registered on the Exchange until August 31, 2013.[4] The fee waiver currently applies to the period beginning June 3, 2013 and ending July 31, 2013.[5] Specifically, during this period, the Exchange will continue to waive the following transaction fees: (i) RMMs $0.23 per contract for standard options or $0.023 for Mini Options; (ii) LMMs $0.20 per contract for standard options or $0.020 for Mini Options; (iii) DLMMs and PLMMs $0.18 per contract for standard options or $0.018 for Mini Options; and (iv) DPLMMs $0.16 per contract for standard options or $0.016 for Mini Options.[6]

The fee waiver is designed both to enhance the Exchange's competitiveness with other option exchanges and to strengthen its market quality. The Exchange believes that the fee waiver increases both intermarket and intramarket competition by incenting market participants and market makers on other exchanges to register as Market Makers on the Exchange. In addition, the Exchange believes that waiving transaction fees for Market Makers registered on the Exchange promotes tighter bid-ask spreads by Market Makers, and increases the volume of transactions in order to allow the Exchange to compete more effectively with other options exchanges for such transactions. The Exchange notes that the Exchange's daily percentage of the total market volume in MIAX listed options has increased since the beginning of the fee waiver—indicating that the fee waiver has enabled the Exchange to compete more effectively with other options exchanges for such transactions.

The Exchange notes that, while the proposal is not based on that of another exchange, that fee waivers are often used by exchanges to increase their competitiveness.[7]

2. Statutory Basis

The Exchange believes that its proposal to amend its fee schedule is consistent with Section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(4) of the Act[9] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

The Exchange believes that the fee waiver is fair, equitable and not unreasonably discriminatory. The fee waiver is reasonable because it waives transaction fees for a limited period in order to enable the Exchange to improve its overall competitiveness and strengthen its market quality for all market participants. The proposed fee waiver is fair and equitable and not unreasonably discriminatory because it will apply equally to all Market Makers. All similarly situated Market Makers are subject to the same fee waiver, and access to the Exchange is offered on terms that are not unfairly discriminatory. The registration as an Exchange Market Maker is equally available to all market participants and Electronic Exchange Members (''EEMs'') that satisfy the requirements of Rule 600. Any market participant may choose to satisfy the additional requirements and obligations of being a Market Maker in order to qualify for the transaction fee waiver.

The fee waiver for Market Makers, and no other market participants, is equitable and not unfairly discriminatory because Market Markers on the Exchange have enhanced quoting obligations measured in both quantity (% time) and quality (minimum bid-ask differentials) that other market participants do not have.[10] The proposal is reasonably designed to enhance the quality of quoting and volume transactions by limiting the proposal to those market participants that have these enhanced obligations to deliver quality markets. Waiving fees during

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Market Makers may be registered as a Lead Market Maker or as a Registered Market Maker. *See* Exchange Rule 600(b). Market Makers registered on the Exchange for purposes of the transaction fee waiver and Section 1(a)(i) of the Fee Schedule include: (i) Registered Market Maker (''RMM''); (ii) Lead Market Maker (''LMM''); (iii) Directed Order Lead Market Maker (''DLMM''); (iv) Primary Lead Market Maker (''PLMM''); and Directed Order Primary Lead Market Maker (''DPLMM''). *See* MIAX Options Fee Schedule, Section 1(a)(i)—Market Maker Transaction Fees.

[4] *See* Securities Exchange Act Release No. 69710 (June 6, 2013), 78 FR 35349 (June 12, 2013) (SR–MIAX–2013–26). The fee waiver only applies to Market Maker transaction fees in Section 1(a)(i) of the MIAX Options Fee Schedule. *See* MIAX Options Fee Schedule, Section 1(a)(i)—Market Maker Transaction Fees. The Exchange notes that the fee waiver has no effect on other fees and dues that may apply to Market Makers including marketing fees, Options Regulatory Fees, market data, and membership application fees. At the end of the period, Market Maker Transaction Fees will return to the prior fee rates unless the Exchange files another 19b–4 Rule Filing to amend its fees.

[5] *See* Securities Exchange Act Release No. 69710 (June 6, 2013), 78 FR 35349 (June 12, 2013) (SR–MIAX–2013–26).

[6] *See* MIAX Options Fee Schedule, Section 1(a)(i)—Market Maker Transaction Fees.

[7] *See e.g.,* Securities Exchange Act Release Nos. 66427 (February 21, 2012), 77 FR 11608 (February 27, 2012) (SR–BATS–2012–011); 65007 (August 2, 2011), 76 FR 48190 (August 8, 2011) (SR–CBOE–2011–071); 56862 (November 29, 2007), 72 FR 68918 (December 6, 2007) (SR–CBOE–2007–135); 55833 (May 31, 2007), 72 FR 31358 (June 6, 2007) (SR–ISE–2007–28).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] *See* MIAX Rules 603, 604, 605.

this period should incent market participants and market makers on other exchanges to register as Market Makers on the Exchange, which will enhance the quality of quoting and increase the volume of contracts traded in options listed on MIAX. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market liquidity. Enhanced market quality and increased transaction volume that results from the increase in Market Maker activity on the Exchange will benefit all market participants and improve competition on the Exchange.

The Exchange believes that an increase in the number of Market Makers, and an increase in the execution volume from Market Makers, will result in increased revenue from other fees and dues that may apply to Market Makers that may potentially offset a portion of the fee waiver.[11] While the Exchange believes that an increase in the number of Market Makers, and an increase in the execution volume from Market Makers, may potentially result in increased trading activity of other market participants, the Exchange does not believe that the fee waiver will result in other market participants subsidizing the activity of Market Makers during the fee waiver period since the Exchange is not proposing any changes to increase the existing fees of other market participants in order to compensate for the temporary transaction fee waiver.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

MIAX does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the fee waiver increases both intermarket and intramarket competition by incenting market participants and market makers on other exchanges to register as Market Makers on the Exchange, which will enhance the quality of quoting and increase the volume of contracts traded on MIAX. To the extent that there is an additional competitive burden on non-Market Makers, the Exchange believes that this is appropriate because Market Markers registered on the Exchange have enhanced quoting obligations measured in both quantity (% time) and quality (minimum bid-ask differentials) that other market participants do not have. Waiving fees during this period should incent market participants and market makers on other exchanges to register as Market Makers on the Exchange, which will enhance the quality of quoting and increase the volume of contracts traded here. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market liquidity. Enhanced market quality and increased transaction volume that results from the anticipated increase in Market Maker activity on the Exchange will benefit all market participants and improve competition on the Exchange. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow. The Exchange believes that the fee waiver reflects this competitive environment because it reduces the Exchange's fees in a manner that encourages market participants to register as Market Makers, to provide liquidity, and to attract order flow to the Exchange. Given the robust competition for volume among options markets, many of which offer the same products, implementing a fee waiver program to attract Market Maker volume like the one being extended in this filing is consistent with the above-mentioned goals of the Act. This is especially true for the smaller options markets, such as MIAX, which is competing for volume with much larger exchanges that dominate the options trading industry. As a new exchange, MIAX has a nominal percentage of the average daily trading volume in options, so it is unlikely that the fee waiver could cause any competitive harm to the options market or to market participants. Rather, the fee waiver is a modest attempt by a small options market to attract order volume away from larger competitors by adopting an innovative pricing strategy. The Exchange notes that if the extension of the fee waiver results in a modest percentage increase in the average daily trading volume in options executing on MIAX, while such percentage would represent a large volume increase for MIAX, it would represent a minimal reduction in volume of its larger competitors in the industry. The Exchange believes that the proposal will help further competition, because market participants will have yet another additional alternative in determining where to execute orders and post liquidity if they factor the benefits of Market Maker transaction fees into the determination.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[12] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include SR–MIAX–2013–36 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–MIAX–2013–36. 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

[11] The Exchange notes that the fee waiver has no effect on other fees and dues that may apply to Market Makers including marketing fees, Options Regulatory Fees, market data, and membership application fees.

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2013–36 and should be submitted on or before August 26, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–18758 Filed 8–2–13; 8:45 am]

**BILLING CODE 8011–01–P**

[13] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–70061; File No. SR–NASDAQ–2013–095]**

## Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Chapter V, Section 6, Obvious Errors, of the Rules of the NASDAQ Options Market (''NOM'')

July 30, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on July 19, 2013, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the 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 Chapter V, Section 6, Obvious Errors, of the Rules of the NASDAQ Options Market (''NOM'').

The text of the proposed rule change is below; proposed new language is italicized; proposed deletions are in brackets.

* * * * *

**NASDAQ Stock Market Rules**

* * * * *

**Options Rules**

* * * * *

**Chapter V Regulation of Trading on NOM**

* * * * *

Sec. 6 Obvious *and Catastrophic* Errors

(a)–(e) No change.

(f) *Catastrophic Errors*

(i)–(ii) No change.

(iii) *Adjust or Bust.* A Nasdaq Official will determine whether there was a Catastrophic Error as defined above. If it is determined that a Catastrophic Error has occurred, whether or not each party to the transaction is an Options Participant, MarketWatch shall adjust the execution price of the transaction, unless both parties agree to adjust the transaction to a different price, to the theoretical price (i) plus the adjustment value provided below for erroneous buy transactions, and (ii) minus the adjustment value provided for erroneous sell transactions, *pursuant to the following chart; provided that the adjusted price would not exceed the limit price of a Public Customer's limit order, in which case the Public Customer would have 20 minutes from notification of the proposed adjusted price to accept it or else the trade will be nullified:*

| Theoretical price | Minimum amount |
|---|---|
| Below $2 | $1 |
| $2 to $5 | 2 |
| Above $5 to $10 | 3 |
| Above $10 to $50 | 5 |
| Above $50 to $100 | 7 |
| Above $100 | 10 |

Upon taking final action, MarketWatch shall promptly notify both parties to the trade electronically or via telephone.

(g) No change.

* * * * *

(b) Not applicable.

(c) Not applicable.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposal is to help market participants better manage their risk by addressing the situation where, under current rules, a trade can be adjusted to a price outside of a Public Customer's limit. Specifically, the Exchange proposes to amend Chapter V, Section 6(f) to enable a Public Customer who is the contra-side to a trade that is deemed to be a catastrophic error to have the trade nullified in instances where the adjusted price would violate the Public Customer's limit price. Only if the Public Customer, or his agent, affirms the customer's willingness to accept the adjusted price through the customer's limit price within 20 minutes of notification of the catastrophic error ruling would the trade be adjusted; otherwise it would be nullified. Today, all catastrophic error trades are adjusted, not nullified, on all of the options exchanges, except on NASDAQ OMX PHLX LLC (''PHLX''), on whose provision this proposal is modeled.[3]

Background

Currently, Chapter V, Section 6 governs obvious and catastrophic errors. Obvious errors are calculated under the rule by determining a theoretical price and determining, based on objective standards, whether the trade should be nullified or adjusted. The rule also contains a process for requesting an obvious error review. Certain more substantial errors may fall under the category of a catastrophic error, for which a longer time period is permitted to request a review and for which trades can only be adjusted (not nullified).

[3] *See* PHLX Rule 1092(f)(ii). Securities Exchange Act Release No. 69304 (April 4, 2013), 78 FR 21482 (April 10, 2013) (SR–Phlx–2013–05).

Trades are adjusted pursuant to an adjustment table that, in effect, assesses an adjustment penalty. By adjusting trades above or below the theoretical price plus or minus a certain amount, the rule assesses a ''penalty'' in that the adjustment price is not as favorable as the amount the party making the error would have received had it not made the error.

Proposal

At this time, the Exchange proposes to change the catastrophic error process to permit certain trades to be nullified. The definition and calculation of a catastrophic error would not change.[4] Once a catastrophic error is determined by a NASDAQ Official, then if both parties to the trade are not a Public Customer,[5] the trade would be adjusted under the current rule. If one of the parties is a Public Customer, then the adjusted price would be compared to the limit price of the order. If the adjusted price would violate the limit price (in other words, be higher than the limit price if it is a buy order and lower than the limit price if it is a sell order), then the Public Customer would be offered an opportunity to nullify the trade. If the Public Customer (or the Public Customer's broker-dealer agent) does not respond within 20 minutes, the trade would be nullified.

These changes should ensure that a Public Customer is not forced into a situation where the original limit price is violated and thereby the Public Customer is forced to spend additional dollars for a trade at a price the Public Customer had no interest in trading and may not be able to afford.

*EXAMPLE 1*—Resting Public Customer forced to adjust through his limit price and would prefer nullification

**Day 1**

8:00:00 a.m. (pre-market)
Public Customer A enters order on NOM to buy 10 GOOG May 750 puts for $25 (cost of $25,000, Public Customer has $50,000 in his trading account).
10:00:00 a.m.
GOOG trading at $750
May 750 puts $29.00–$31.00 (100x100) on all exchanges
10:04:00 a.m.
GOOG drops to $690
May 750 puts $25–$100 (10x10) NOM
May 750 puts $20–$125 (10x10) CBOE
May 750 puts $10–$200 (100x100) on all other exchanges
10:04:01 a.m.
Public Customer B enters order to sell 10 May 750 puts for $25 (credit of $25,000)
10:04:01 a.m.
10 May 750 puts execute at $25 ($35 under parity)[6] with Public Customer A buying and Public Customer B selling.
10:04:02 a.m. (1 second later)
GOOG trading $690
May 750 puts $75–$78 (100x100) NOM
May 750 puts $75–$80 (10x10) CBOE
May 750 puts $70–$80 (100x100) All other exchanges

No obvious error is filed within 20 minute notification time required by rule. If this had been an obvious error review, the trade would have been nullified in accordance with Chapter V, Section 6 because one of the parties to the trade was not an Options Participant.

4:00:00 p.m. (the close)
GOOG trading $710
May 750 puts $60–$63 (100x100) NOM
May 750 puts $55–$70 (10x10) CBOE
May 750 puts $50–$70 (100x100) All other exchanges

**Day 2**

8:00:00 a.m. (pre-market)
Public Customer B, submits S10 GOOG May 750 puts at $25 under Catastrophic Review.
Trade meets the criteria of Catastrophic Error and is adjusted to $68 ($75 (the 10:04:02 a.m. price) less $7 adjustment penalty).
9:30:00 a.m. (the opening)
GOOG trading $725
May 750 puts open $48.00–$51.00 (100x100) on all exchanges
Under current rule:
Without a choice, Public Customer A is forced to spend $68 (for a total cost of $68,000, with only $25,000 in his account)
Puts are now trading $48, so Public Customer A shows a loss of $20,000 ($68 less $48x10 contracts x 100 multiplier)

Under proposed rule:

Public Customer A would be able to choose to have the B10 GOOG May 750 puts nullified avoiding both a loss, and an expenditure of capital exceeding the amount in his account. Public Customer B would be relieved of the obligation to sell the puts at 25 because the trade would be nullified.

*EXAMPLE 2*—Resting Public Customer trades, sells out his position, and chooses to keep the adjusted trade and avoid nullification

**Day 1**

8:00:00 a.m. (pre-market)
Public Customer A enters order on NOM to Buy 10 BAC April 7.00 calls for $.01 (cost of $10 total). (Customer has $3,000 in his account).
10:00:00 a.m.
BAC trading $11
April 7 calls $4.50–$4.70 (100x100) on all exchanges
10:04:00 a.m.
BAC Trading $11
April 7 calls $.01–$4.70 (10x10) NOM
April 7 calls $4.50–$4.70 (10x10) CBOE
April 7 calls $4.50–$4.70 (10x10)) All other exchanges
10:04:01 a.m.
Public Customer B enters order to sell 10 April 7 calls at $.01 on NOM with an ISO indicator (which allows trade through)
10:04:01 a.m.
10 April 7 calls execute at $.01 on NOM Public Customer A buying and Public Customer B selling.
10:04:02 a.m. (1 second later)
BAC is $11
April 7 calls $4.50–$4.70 (10x10) NOM
April 7 calls $4.50–$4.70 (10x10) CBOE
April 7 calls $4.50–$4.70 (10x10) All other exchanges

No obvious error is filed within 20 minute notification time required by rule. If this had been an obvious error review, the trade would have qualified as an obvious error and been nullified or adjusted.

11:00:00 a.m.
BAC trading $9.60
April 7 calls $3.00–$3.25 (10x10) NOM
April 7 calls $.3.00–$3.25 (10x10) CBOE
April 7 calls $3.00–$3.25 (10x10) All other exchanges
Public Customer A sells 10 April 7 calls at $3.00 (a total credit of $3,000 for a $2,990 profit)
3:00:00 p.m.
BAC trading $12.80
April 7 calls $5.80–$6.00 (10x10) NOM
April 7 calls $5.80–$6.00 (10x10)

[4] Nor is the definition or process for obvious errors changing. However, the Exchange proposes to add reference to ''catastrophic'' errors to the title of the provision to better reflect its content and match that of other options exchanges.

[5] Chapter I, Section 1(a)(49) defines a Public Customer as person that is not a broker or dealer in securities. Professional Customers are Public Customers, for purposes of Chapter V, Section 6. *See* Chapter I, Section 1(a)(48).

[6] Parity is the intrinsic value of an option when it is in-the-money. With respect to puts, it is calculated by subtracting the price of the underlying from the strike price of the put. With respect to calls, it is calculated by subtracting the strike price from the price of the underlying.

CBOE
April 7 calls $5.80–$6.00 (10x10) All other exchanges
Public Customer A has now no position and would be at risk of a loss if nullified.

3:20:00 p.m.
Public Customer B submits S10 BAC April 7 calls at $.01 under Catastrophic Error Review.
Trade meets the criteria of Catastrophic Error and is adjusted to $2.50 ($4.50 (the 10:04:02 a.m. price) less $2 adjustment penalty).

Impact:

Under current Rule: Public Customer A would be adjusted to $2.50 ($4.50 (the 10:04:02 a.m. price) less $2 adjustment penalty).

Under Proposed rule:

Illustrating the need for a choice, Public Customer A chooses within 20 minutes to accept an adjustment to $2.50 instead of a nullification, locking in a gain of $500 instead of $2.990 (B 10 at $2.50 vs. S10 at $3.00).

If not given a choice, Public Customer A would be naked short 10 calls at $3.00 that are now offered at $6.00 (a $3,000 loss).

These examples illustrate the need for Public Customer to have a choice in order to manage his risk. By applying a notification time limit of 20 minutes, it lessens the likelihood that the customer will try to let the direction of the market for that option dictate his decision for a long period of time, thus exposing the contra side to more risk. This 20 minute time period is akin to the notification period currently used in the rule respecting obvious errors (as opposed to catastrophic errors).[7]

For a market maker or a broker-dealer, the penalty that is part of the price adjustment process is usually enough to offset the additional dollars spent, and they can often trade out of the position with little risk and a potential profit. For a customer who is not immersed in the day-to-day trading of the markets, this risk may be unacceptable. A customer is also less likely to be watching trading activity in a particular option throughout the day and less likely to be closely focused on the execution reports the customer receives after a trade is executed. Accordingly, the Exchange believes that it is fair and reasonable, and consistent with statutory standards, to change the procedure for catastrophic errors for Public Customers and not for other participants.

The Exchange believes that the proposal is a fair way to address the issue of a customer's limit price, yet still balance the competing interests of certainty that trades stand versus dealing with true errors. Earlier this year, PHLX amended its Rule 1092(f) to adopt the same catastrophic error process as proposed herein. In approving that proposal, the Commission stated ''. . . the Exchange has weighed the benefits of certainty to non-broker-dealer customers that their limit price will not be violated against the costs of increased uncertainty to market makers and broker-dealers that their trades may be nullified instead of adjusted depending on whether the other party to the transaction is or is not a customer. The proposed rule change strikes a similar balance on this issue to the approach taken in the Exchange's Obvious Error Rule, whereby transactions in which an Obvious Error occurred with at least one party as a non-specialist are nullified unless both parties agree to adjust the price of the transaction within 30 minutes of being notified of the Obvious Error.''[8]

The Exchange is proposing to amend Chapter V, Section 6 to eliminate the risk associated with Public Customers receiving an adjustment to a trade that is outside of the limit price of their order, when there is a catastrophic error ruling respecting their trade. The new provision would continue to entail specific and objective procedures. Furthermore, the new provision more fairly balances the potential windfall to one market participant against the potential reconsideration of a trading decision under the guise of an error.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[9] in general, and furthers the objectives of Section 6(b)(5) of the Act[10] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by helping Exchange members better manage the risk associated with potential erroneous trades. Specifically, the Exchange believes that the proposal is consistent with these principles because it provides a fair process for Public Customers to address catastrophic errors involving a limit order. In particular, the proposal permits nullification in certain situations. Further, it gives customers a choice. For two reasons, the Exchange does not believe that the proposal is unfairly discriminatory, even though it offers some participants (Public Customers) a choice as to whether a trade is nullified or adjusted, while other participants will continue to have all of their catastrophic errors adjusted. First, with respect to obvious errors (as opposed to catastrophic errors), the rule currently differentiates among Participants and whether a trade is adjusted or busted depends on whether an Options Participant is involved.[11] Second, options rules often treat customers in a special way,[12] recognizing that customers are not necessarily immersed in the day-to-day trading of the markets, less likely to be watching trading activity in a particular option throughout the day and may have limited funds in their trading accounts. Accordingly, differentiating among Participant types by permitting customers to have a choice as to whether to nullify a trade involving a catastrophic error is not unfairly discriminatory, because it is reasonable and fair to provide non-professional customers with additional options to protect themselves against the consequences of obvious errors.

The Exchange acknowledges that the proposal contains some uncertainty regarding whether a trade will be adjusted or nullified, depending on whether one of the parties is a Public Customer, because a person would not know, when entering into the trade, whether the other party is or is not a Public Customer. The Exchange believes that the proposal nevertheless promotes just and equitable principles of trade and protects investors and the public interest, because it eliminates a more serious uncertainty in the rule's operation today, which is price uncertainty. Today, a customer's order can be adjusted to a significantly different price, as the examples above illustrate, which is more impactful than the possibility of nullification. Furthermore, there is uncertainty in the current obvious error portion of Chapter V, Section 6 (as well as the rules of other options exchanges), which Participants have dealt with for a number of years. Specifically, Chapter V, Section 6(e)(i) and (ii) provide: Where each party to the transaction is an Options Participant, the execution

[7] *See* Chapter V, Section 6(e)(i) [sic]. If a party believes that it participated in a transaction that was the result of an Obvious Error, it must notify MarketWatch via written or electronic complaint within 20 minutes of the execution.

[8] *See supra* note 3.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] *See* Chapter V, Section 6(e)(i).

[12] For example, many options exchange priority rules treat customer orders differently and some options exchanges only accept certain types of orders from customers. Most options exchanges charge different fees for customers.

price of the transaction will be adjusted to the prices provided in subparagraphs (A) and (B) below unless both parties agree to adjust the transaction to a different price or agree to bust the trade within ten (10) minutes of being notified by MarketWatch of the Obvious Error; where at least one party to the Obvious Error is not an Options Participant, the trade will be nullified unless both parties agree to an adjustment price for the transaction within 30 minutes of being notified by MarketWatch of the Obvious Error.

Therefore, a Participant who prefers adjustments over nullification cannot guarantee that outcome, because, if he trades with a non-Participant, a resulting obvious error would only be adjusted if such non-Participant agreed to an adjustment. This uncertainty has been embedded in the rule and accepted by market participants. The Exchange believes that this proposal, despite the uncertainty based on whether a Public Customer is involved in a trade, is nevertheless consistent with the Act, because the ability to nullify a Public Customer's trade involving a catastrophic error should prevent the price uncertainty that mandatory adjustment under the current rule creates, which should promote just and equitable principles of trade and protect investors and the public interest.

The proposal sets forth an objective process based on specific and objective criteria and subject to specific and objective procedures. In addition, the Exchange has again weighed carefully the need to assure that one market participant is not permitted to receive a windfall at the expense of another market participant that made a catastrophic error, against the need to assure that market participants are not simply being given an opportunity to reconsider poor trading decisions. Accordingly, the Exchange has determined that introducing a nullification procedure for catastrophic errors is appropriate and consistent with the Act.

Consistent with Section 6(b)(8),[13] the Exchange also believes that the proposal does not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act, as described further below.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Currently, most options exchanges have similar, although not identical, rules regarding catastrophic errors. To the extent that this proposal would result in NOM's rule being different, market participants may choose to route orders to NOM, helping NOM compete against other options exchanges for order flow based on its customer service by having a process more responsive to current market needs. Of course, other options exchanges may choose to adopt similar rules. The proposal does not impose a burden on intra-market competition not necessary or appropriate in furtherance of the purposes of the Act, because, even though it treats different market participants differently, the Obvious Errors rule has always been structured that way and adding the ability for Public Customers to choose whether a catastrophic error trade is nullified does not materially alter the risks faced by other market participants in managing the consequences of obvious errors. Overall, the proposal is intended to help market participants better manage the risk associated with potential erroneous options trades and does not impose a burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[14] and subparagraph (f)(6) of Rule 19b–4 thereunder.[15]

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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2013–095 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2013–095. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b)(3)(a)(ii).

[15] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

NASDAQ–2013–095 and should be submitted on or before August 26, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–18749 Filed 8–2–13; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–70063; File No. SR–BOX–2013–38]**

## Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing of a Proposed Rule Change To Modify the Complex Order Filter

July 30, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 22, 2013, BOX Options Exchange LLC (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 7240(b)(3)(iii) related to filtering of Complex Orders and Rule 7130 to clarify that exposed Complex Orders are included in the Exchange's High Speed Vendor Feed (''HSVF''). The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://boxexchange.com.*

### 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 Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend its rules relating to filtering inbound Complex Orders[3] (the ''Complex Order Filter''). The proposed rule change would make the existing exposure period available to all unexecuted Complex Orders with an exposure price equal to or better than cNBBO.[4] The proposed rule change would further provide Exchange Participants with a mechanism to elect whether to participate in the exposure process and would clarify that the broadcast notice of each exposed Complex Order is provided to market participants. The Exchange believes the proposed Complex Order Filter will simplify the filtering procedure, provide greater flexibility to Participants submitting Complex Orders to BOX Market LLC, the Exchange's trading facility (''BOX'').

The proposed Complex Order Filter is intended to expand the existing Complex Order Filter. The proposed Complex Order Filter will continue to apply to Complex Orders on standard strategies (two legs with a ratio of 1:1) and non-standard strategies (other than two legs with a ratio of 1:1). The proposed Complex Order Filter will not affect the Exchange's rules regarding execution of single options series on the BOX Book. The Exchange notes that, currently, orders on single option series may be subjected to an exposure period.[5] However, while unexecutable orders on single option series may be routed away from the Exchange or rejected, Complex Orders are not routed away.

The Exchange's existing Complex Order Filter is contained in Exchange Rule 7240(b)(3)(iii) and provides that all inbound Complex Orders to BOX are filtered to ensure that each leg of a Complex Order will be executed at a price that is equal to or better than NBBO and BOX BBO for each of the component series.

The proposed Complex Order Filter operates by a series of sequential steps, set forth in proposed Rule 7240(b)(3)(iii)(A), (B), (C) and (D), resulting in the Complex Order being fully or partially executed, cancelled or entered on the Complex Order Book.[6] The proposed Complex Order Filter differs from the existing Complex Order Filter by allowing Limit Complex Orders that are not immediately executable to be subject to the exposure period.

The first step in the Complex Order Filter is described in existing Rule 7240(b)(3)(iii)(A) and provides that inbound Complex Orders with execution prices equal to or better than both cNBBO and cBBO are first executed against existing interest on the BOX Book[7] and the Complex Order Book. The Exchange proposes to retain this initial execution step, unchanged from the current Complex Order Filter, and adding the words, ''to the extent possible,'' to Rule 7240(b)(3)(iii)(A) to clarify that such execution may be only a partial execution of the Complex Order.

Following the initial execution step, the current Complex Order Filter contemplates a series of steps set forth in existing Rule 7240(b)(3)(iii) by which, depending upon the Complex Order type and price, certain Complex Orders are exposed and others are entered on the Complex Order Book. Exposed orders may be exposed for execution for a period of up to one second. Any executable, opposite side orders received during the exposure period immediately execute against the exposed Complex Order and any remaining unexecuted portion is cancelled. Currently, after any initial execution, Limit Complex Orders are directly entered on the Complex Order Book without an opportunity for exposure.[8]

Currently, the Exchange permits BOX-Top and Market Complex Orders to be exposed for an exposure period of up to one second to the extent not executed in the initial execution step.[9] The Exchange proposes to allow Limit Complex Orders with an exposure price

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] ''Complex Order'' is defined as ''any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, for the same amount, in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) and for the purpose of executing a particular investment strategy.'' See Exchange Rule 7240(a)(5).

[4] See proposed Rule 7240(b)(3)(iii)(B).

[5] See Rule 7130(b)(4)(ii).

[6] ''Complex Order Book'' is defined as ''the electronic book of Complex Orders maintained by the BOX Trading Host.'' See Exchange Rule 7240(a)(6).

[7] ''BOX Book'' is defined as ''the electronic book of orders on each single option series maintained by the BOX Trading Host.'' See Exchange Rule 100(a)(10).

[8] See Exchange Rule 7240(b)(3)(iii)(C)(I) and Rule 7240(b)(3)(iii)(D).

[9] See Exchange Rule 7240(b)(3)(iii)(B) and (C)(II).

equal to, or better than, the same side cNBBO to also be exposed to the extent not previously executed in the initial execution step. However, if the Complex Order's exposure price would be worse than the same-side cNBBO, the Complex Order will not be exposed and will be cancelled; provided that a Limit Complex Order not exposed for this reason, and which would not lock or cross the Complex Order Book, will be entered on the Complex Order Book.[10] The Exchange believes allowing inbound Limit Complex Orders that are not executable on BOX but are executable against the cNBBO to be subject to the exposure period will result in higher numbers of exposed Complex Orders and thereby improve order execution opportunities for Participants.

The exposure period will not exceed one second and it will be set by the Exchange, taking into consideration the technological ability of Participants to respond and similar exposure periods implemented by the Exchange and other exchanges. The Exchange proposes to amend the exposure period language in Rule 7240(b)(3)(iii)(B) to state that the exposure period will be a time period established by the Exchange, not to exceed one second. This change conforms to language previously proposed by the Exchange with respect to Rule 7130(b)(4)(ii) for orders on single option series.[11] The Exchange will notify Participants of the duration of the exposure period, and any changes to the duration, via regulatory circular.

Currently, a Participant may voluntarily cancel a Complex Order at any time, including during the exposure period, and no change to that ability is proposed. However, the Exchange now proposes to permit Participants the additional flexibility to specify, when submitting a Complex Order, whether or not the Complex Order will be subject to exposure before being entered on the Complex Order Book. If a Participant so elects, the exposure period in the proposed Complex Order Filter may be skipped for a specified Complex Order. If no preference is specified, the Complex Order will be exposed by default.

The Exchange proposes that any unexecuted portion of a Complex Order remaining at the conclusion of the exposure period (or after the initial execution step, if the submitting Participant elects to forego the exposure period) then will be either entered on the Complex Order Book or cancelled.

Complex Orders will be cancelled if (i) the Participant submitting the Complex Order provides instructions that the Complex Order is to be cancelled at that point, (ii) the Complex Order is a Market Order, (iii) the Complex Order is a BOX-Top Order, no part of which has been executed, or (iv) the Complex Order is a BOX-Top or Limit Order at a limit price that otherwise could execute against interest on BOX but only at a price that is not equal to or better than cNBBO.[12]

The Exchange proposes that any unexecuted Limit or BOX-Top Complex Orders will be entered on the Complex Order Book at the end of the exposure period (or after the initial execution step, if the submitting Participant elects to forego the exposure period) unless it is cancelled pursuant to proposed Rule 7240(b)(3)(iii)(C).[13]

The Exchange further proposes to amend its Rule 7130 to clarify that the HSVF is made available to market participants, rather than displayed to Options Participants [14] and that exposed Complex Orders are included in the HSVF.[15] The proposed changes to Rule 7130 do not represent changes to the operation of the Exchange but are simply clarifications of the rule text. The HSVF is made available to market participants but neither market participants nor Options Participants are required to receive the display.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[16] in general, and Section 6(b)(5) of the Act,[17] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange believes that the rule filing is reasonable, equitable and not unfairly discriminatory because the benefits of simplicity, flexibility, visibility and increased opportunities for execution and better pricing are equally available to all Participants.

The proposed Complex Order Filter differs from the existing Complex Order Filter by allowing Limit Complex Orders that are not executable on BOX but are executable against the cNBBO to be subject to the exposure period. The Exchange believes that broadening the range of Complex Orders that may be exposed will result in higher numbers of exposed Complex Orders, increase visibility and provide flexibility and thereby improve order execution opportunities for Participants. As a result, the Exchange believes the proposed rule changes promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange proposes to permit Participants the additional flexibility to choose, when submitting a Complex Order, whether or not the Complex Order will be subject to exposure before being entered on the Complex Order Book. If a Participant so elects, the exposure period in the proposed Complex Order Filter may be skipped for a specified Complex Order. Providing this additional tool to Participants serves 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 the proposed amendment of Rule 7130, while it does not change Exchange operations, adds clarity to its existing rule text by providing that the HSVF is made available to market participants, and not limited to BOX Options Participants, but neither market participants nor Options Participants are required to receive the display, which wider distribution and choice for market participants serves to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

For the foregoing reasons, the Exchange believes this proposal is a reasonable modification to its rules, designed to facilitate increased interaction of Complex Orders on the Exchange, and to do so in a manner that ensures a dynamic, real-time trading mechanism that maximizes opportunities for trade executions for Complex Orders. The Exchange believes it is appropriate and consistent with the Act, for the purpose of clarity and in the

[10] See proposed Rule 7240(b)(3)(iii)(B).

[11] See SR–BOX–2013–32.

[12] See proposed Rule 7240(b)(3)(iii)(C).

[13] See proposed Rule 7240(b)(3)(iii)(D).

[14] See proposed change to Rule 7130(a).

[15] See proposed change to Rule 7130(a)(2)(vii).

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

public interest, to adopt the proposed amendments to Rule 7240(b)(3)(iii).

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe the proposed rule change represents any undue burden on competition or will impose any burden on competition among exchanges in the listed options marketplace not necessary or appropriate in furtherance of the purposes of the Act. The features of the proposed rule change will apply equally to all Participants and are available to all Participants.

Submitting a Complex Order is entirely voluntary and Participants will determine which type of order they wish to submit, if any, to the Exchange. The Exchange operates in a highly competitive marketplace with other competing exchanges and market participants can readily direct their Complex Order flow to any these exchanges if they so choose.

*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 comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BOX–2013–38 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–BOX–2013–38. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices 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–BOX–2013–38, and should be submitted on or before August 26, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–18751 Filed 8–2–13; 8:45 am]

**BILLING CODE 8011–01–P**

[18] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–70071; File No. SR–NYSEMKT–2013–65]**

## Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Amex Options Fee Schedule To Increase the Royalty Fees Applicable to Non-Customer Transactions in Options on the Russell 2000 Index

July 30, 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 July 19, 2013, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change**

The Exchange proposes to amend the NYSE Amex Options Fee Schedule to increase the Royalty Fees applicable to non-Customer transactions in options on the Russell 2000 Index (''RUT''). 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

*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 NYSE Amex Options Fee Schedule to increase the Royalty Fees applicable to non-Customer transactions in options on RUT from $0.15 to $0.40 per contract. Royalty Fees charged by the Exchange reflect the pass-through charges associated with the licensing of certain products, including RUT. The proposed increase in the Royalty Fee for RUT from $0.15 to $0.40 per contract is a reflection of the increased cost the Exchange has incurred in securing a license agreement from the index provider. Absent the license agreement, the Exchange and its participants would be unable to trade RUT options and would lose the ability to hedge small cap securities with a large notional value, European-style cash-settled index option.

The proposed change will be operative on August 1, 2013.

The proposed change is not otherwise intended to address any other issues relating to Royalty Fees and the Exchange is not aware of any problems that market participants would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[5] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers, and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed increase in the Royalty Fee from $0.15 to $0.40 for options on RUT is reasonable because Royalty Fees charged by the Exchange reflect the pass-through charges associated with the licensing of certain products, including RUT. The proposed increase is therefore a direct result of an increase in the licensing fee charged to the Exchange by the index provider and the owner of the intellectual property associated with the index.

The Exchange believes that the proposed increase in the Royalty Fee from $0.15 to $0.40 for options on RUT is equitable and not unfairly discriminatory because Royalty Fees are assessed only on those non-Customer participants who choose to transact in a product that requires the Exchange to obtain a licensing agreement based on the intellectual property rights associated with the product, as is the case with RUT. The Exchange further believes that this is equitable and not unfairly discriminatory because RUT has some products that can give participants a similar economic exposure without an associated Royalty Fee. In particular, there are exchange-traded fund (''ETF'') options that are based on RUT, such as the iShares Russell 2000 ETF traded under the symbol IWM. This means that participants that would be liable for the Royalty Fees can avoid them by transacting in alternative products, if they so choose.

The Exchange assesses the Royalty Fees on non-Customer participants such as NYSE Amex Market Makers, non-NYSE Amex Market Makers, ATP Firms, Professional Customers, and Broker Dealers.[6] The Exchange believes that it is equitable and not unfairly discriminatory to continue to not charge Royalty Fees to Customers, which has been the case since the Exchange implemented Royalty Fees, because the Exchange is attempting to continue to attract Customer order flow in RUT options, which in turn can interact with other participants' order flow on the Exchange to their benefit.[7]

For the reasons given above, the Exchange believes that the proposed increase from $0.15 to $0.40 for the Royalty Fee charged to non-Customer transactions in RUT options is reasonable, equitable, and not unfairly discriminatory. Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

In accordance with Section 6(b)(8) of the Act,[8] 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. By providing all participants on the Exchange with the ability to hedge via RUT options, the Exchange is not placing any burden on competition among its various participants. The Exchange further notes that the licensing agreement it has secured is not an exclusive agreement as at least two other option exchanges continue to trade RUT options and charge a fee related to such license.[9] As such, there is no burden on competition among exchanges for the trading of RUT options.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [10] of the Act and subparagraph (f)(2) of Rule 19b–4 [11] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

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) [12] 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

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4) and (5).

[6] *See* endnote 11 of the Fee Schedule.

[7] *See* Securities Exchange Act Release No. 53968 (June 9, 2006), 71 FR 34971 (June 16, 2006) (SR–Amex–2006–56).

[8] 15 U.S.C. 78f(b)(8).

[9] *See* Chicago Board Options Exchange (''CBOE'') Fee Schedule, available at *http://www.cboe.com/TradingResources/FeeSchedule.aspx*. The Exchange's affiliate NYSE Arca, Inc. also has proposed to increase its Royalty Fee for RUT options from $0.15 to $0.40 per contract. *See* SR–NYSEArca–2013–76.

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(2).

[12] 15 U.S.C. 78s(b)(2)(B).

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–2013–65 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–2013–65. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room at 100 F Street NE., Washington, DC 20549–1090 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2013–65, and should be submitted on or before August 26, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–18757 Filed 8–2–13; 8:45 am]

**BILLING CODE 8011–01–P**

[13] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–70067; File No. SR–NYSEARCA–2013–74]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Modifying the Content of the NYSE Arca Trades Digital Media Data Feed

July 30, 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 July 18, 2013, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to revise the description of the NYSE Arca Trades Digital Media data feed. 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change*

1. Purpose

The Exchange proposes to revise the description of the NYSE Arca Trades Digital Media data feed.

In 2009, the Securities and Exchange Commission (''Commission'') approved the NYSE Arca Trades data feed and certain fees for it.[4] NYSE Arca Trades is a NYSE Arca-only market data feed that allows a vendor to redistribute on a real-time basis the same last sale information that the Exchange reports under the Consolidated Tape Association (''CTA'') Plan for inclusion in the CTA Plan's consolidated data streams and certain other related data elements. Specifically, NYSE Arca Trades includes the real-time last sale price, time, size, and bid/ask quotations for each security traded on the Exchange and a stock summary message. The stock summary message updates every minute and includes NYSE Arca's opening price, high price, low price, closing price, and cumulative volume for the security.

In April 2013, the Exchange began offering a new version of NYSE Arca Trades called ''NYSE Arca Trades Digital Media,'' which was described as including the real-time last sale price, time, size, and stock summary message for each security traded on the Exchange, but not including access to the bid/ask quotation included with the NYSE Arca Trades product.[5] At that time, the Exchange believed that it could efficiently remove the bid/ask information from the feed but has since determined that the time and resources required to do so would be significant and not commensurate with the need for the change. As such, the NYSE Arca Trades Digital Media product is offered with the bid/ask component included, and as such does not have different content than the regular NYSE Arca Trades data fee. The only difference between the products is the permitted distribution channels. NYSE Arca Trades Digital Media permits market data vendors, television broadcasters, Web site and mobile device service providers, and others to distribute the data product to their customers for viewing via television, Web site, and mobile devices. They are not be [sic] permitted to provide NYSE Arca Trades

[4] *See* Securities Exchange Act Release No. 59598 (Mar. 18, 2009), 74 FR 12919 (Mar. 25, 2009) (SR–NYSEArca–2009–05).

[5] *See* Securities Exchange Act Release No. 69274 (Apr. 2, 2013), 78 FR 20986 (Apr. 8, 2013) (SR–NYSEArca–2013–30).

Digital Media in a context in which a trading or order routing decision can be implemented unless CTA data is available in an equivalent manner, must label the products as NYSE Arca-only data, and must provide a hyperlinked notice similar to the one provided for CTA delayed data. These restrictions do not apply to the NYSE Arca Trades product.

No other changes to the data components, terms, or pricing of any product are proposed.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[6] of the Act, in general, and furthers the objectives of Section 6(b)(5)[7] of the Act, in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and it is not designed to permit unfair discrimination among customers, brokers, or dealers.

The Exchange offers the NYSE Arca Trades Digital Media data product in recognition of the demand for a more seamless and easier-to-administer data distribution model that takes into account the expanded variety of media and communication devices that investors utilize today. As described above, the Exchange has determined that the expense of creating and monitoring a new feed without the bid-ask element is not warranted. No other aspect of the NYSE Arca Trades or NYSE Arca Trades Digital Media offering is being changed.

In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to consumers of such data. It was believed that this authority would expand the amount of data available to users and consumers of such data and also spur innovation and competition for the provision of market data. The Exchange believes that the data products proposed herein are precisely the sort of market data products that the Commission envisioned when it adopted Regulation NMS. The Commission concluded that Regulation NMS—by lessening regulation of the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition:

> [E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.[8]

By removing ''unnecessary regulatory restrictions'' on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history.

The Exchange further notes that the existence of alternatives to the Exchange's products, including real-time consolidated data, free delayed consolidated data, and proprietary data from other sources, ensures that the Exchange is not unreasonably discriminatory because vendors and subscribers can elect these alternatives. In addition, the proposal would not permit unfair discrimination because the product will be available to all of the Exchange's vendors and customers on an equivalent basis.

*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 market for proprietary data products is currently competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary data is produced by each individual exchange, as well as other entities (such as internalizing broker-dealers and various forms of alternative trading systems, including dark pools and electronic communication networks), in a vigorously competitive market. It is common for market participants to further and exploit this competition by sending their order flow and transaction reports to multiple markets, rather than providing them all to a single market.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEARCA–2013–74 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–NYSEARCA–2013–74. This

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (File No. S7–10–04).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires 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.

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 NYSE Arca. 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–NYSEARCA–2013–74 and should be submitted on or before August 26, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–18755 Filed 8–2–13; 8:45 am]

**BILLING CODE 8011–01–P**

[11] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–70064; File No. SR–CBOE–2013–078]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule To Include a $60 Session Fee for the Series 56 (S501) Continuing Education

July 30, 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 July 25, 2013, the Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The 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.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend its Fees Schedule.[3] More specifically, the Exchange is proposing to make changes to the section ''Regulatory Fees.'' Currently under the Exchange's Regulatory Fees, the Exchange charges a $100 session fee to registered persons at the Exchange for a continuing education (''CE'') requirement that is outlined in Exchange Rule 9.3A. The Exchange is now proposing to add a $60 session fee for those individuals that only have the Proprietary Trader (''Series 56'') registration.

Exchange Rule 3.6A.08 outlines the registration and qualification requirements (including prerequisite examinations) for TPHs and TPH organizations conducting proprietary trading, market-making and/or effecting transactions on behalf of other broker dealers.[4] Exchange Rule 9.3A requires all TPHs and TPH organizations to complete the Regulatory Element of the CE program beginning with the occurrence of ''their second registration anniversary date and every three years thereafter or as otherwise prescribed by the Exchange.'' [5] Recently, the Exchange amended Rule 9.3A to enumerate the different CE programs offered by the Exchange including the S501 Series 56 Proprietary Trader Continuing Education Program (''S501'').[6] The Exchange is now proposing to outline the necessary fees associated with the Regulatory Element of the S501.

The Exchange has determined that these changes are necessary to administer the Series 56 CE program. Specifically, the $60 session fee will be used to fund the CE program administered to Proprietary Traders that have a Series 56 registration [7] and are required to complete the S501. The $60 session fee is less than the $100 session fee (currently in the Exchange's fee schedule) for the S101 General Program for Series 7 registered persons (''S101'') as the Series 7 examination is a more comprehensive examination, and, thus, the CE is more comprehensive as well. Thus, the Exchange believes the $60 fee is reasonable and proportional fee based upon the programming of the CE. In addition, the $60 fee will only be used for the administration of the CE versus the S101 which utilizes the $100 fee for both development and administration. The costs associated with the development costs [sic] of the S501 are included in the examination fee.

Because the CE element is separate and different from the CE already administered, the proposed change would put TPHs and TPH organizations on notice of the associated fees. The proposed fee would allow the Exchange to fund the S501 which is more tailored to the Series 56 registration. Also, the Exchange believes other exchanges will be assessing the same fee for this CE program. The proposed changes are to take effect on August 19, 2013.

[3] *See* Exchange Rule 2.20, which authorizes the Exchange, from time to time, to ''fix the fee and charges payable by Trading Permit Holders.''

[4] *See* Exchange Rule 3.6A.08.

[5] *See* Exchange Rule 9.3A(a).

[6] *See* Securities Exchange Act Release No. 34–70027 (July 23, 2013) (SR–CBOE–2013–076) (immediately effective rule change to specify the different CE requirements for registered persons based upon their registration with the Exchange).

[7] Both individuals that have successfully passed the Series 56 examination and individuals that have had the examination waived by the Exchange are required to take the S501.

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.[8] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[9] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitation transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[10] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed rule change is equitable and not unfairly discriminatory as it is allocated to all individuals with a Series 56 registration which is required under Exchange Rule 3.6A. In addition, the fee is reasonable as it lower than the previously assessed CE fee because the S501 is more limited than the S101, and the fee is only intended to recoup the costs of the administration of the program. Also, the Exchange believes other exchanges will be assessing the same fee for this CE program. The Exchange believes the proposed rule change will protect investors and the public interest by covering the administration of the program and allow the Exchange to tailor a CE fee for the Series 56. This allows the Exchange to better prevent fraudulent and manipulative acts and practices because the CE will properly educate Proprietary Traders in the topics of securities laws and other rules and help them to comply with those laws and rules.

Finally, the Exchange also believes the proposed rule change is consistent with Section 6(b)(1) of the Act,[11] which provides that the Exchange be organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by the individuals with a series 56 registration with the Act, the rules and regulations thereunder, and the rules of the Exchange. The proposed rule change is designed to fund the administration of the S501, and, more specifically, to help more closely cover the costs of educating individuals that hold a Series 56 registration. Thus, the proposed changes will help the Exchange to enforce compliance of its TPHs with the Act and Exchange rules.

*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. In particular, the proposed rule change will not impose any burden on intermarket competition as it will merely serve to aid the Exchange in fulfilling its obligations as a Self-Regulatory Organization by further funding the administration of the new CE. The proposed rule change will not impose any burden on intramarket competition as all TPHs and TPH organizations are required to pass a qualification exam as outline in Rule 3.6A and fulfill a CE requirement as outlined in Rule 9.3A. In addition, the Exchange believes other exchanges will be assessing the same fee for this CE program.

*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 proposed rule change is designated by the Exchange as establishing or changing a due, fee, or other charge, applicable only to a member, thereby qualifying for effectiveness on filing pursuant to Section 19(b)(3)(A)(ii) of the Act[12] and subparagraph (f)(2) of Rule 19b–4[13] thereunder.

At any time within 60 days of the filing of this 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–2013–078 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–2013–078. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2013–078 and should be submitted on or before August 26, 2013.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] *Id.*

[11] 15 U.S.C. 78f(b)(1).

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

[13] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–18752 Filed 8–2–13; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–70062; File No. SR–BX–2013–042]**

## Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Permit the Nullification of Trades Involving Catastrophic Errors

July 30, 2013

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on July 19, 2013, NASDAQ OMX BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the 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 Chapter V, Section 6, Obvious Errors. Specifically, BX proposes to amend Section 6(f)(iii) to permit the nullification of trades involving catastrophic errors in certain situations specified below.

The text of the proposed rule change is below; proposed new language is italicized; proposed deletions are in brackets.

* * * * *

**NASDAQ OMX BX Rules**

* * * * *

**Options Rules**

* * * * *

**Chapter V Regulation of Trading on BX Options**

* * * * *

Sec. 6 Obvious *and Catastrophic* Errors

(a)–(e) No change.

(f) *Catastrophic Errors*

(i)–(ii) No change.

(iii) *Adjust or Bust.* A BX Official will determine whether there was a Catastrophic Error as defined above. If it is determined that a Catastrophic Error has occurred, whether or not each party to the transaction is an Options Participant, MarketWatch shall adjust the execution price of the transaction, unless both parties agree to adjust the transaction to a different price, to the theoretical price (i) plus the adjustment value provided below for erroneous buy transactions, and (ii) minus the adjustment value provided for erroneous sell transactions*, pursuant to the following chart; provided that the adjusted price would not exceed the limit price of a Public Customer's limit order, in which case the Public Customer would have 20 minutes from notification of the proposed adjusted price to accept it or else the trade will be nullified:*

| Theoretical price | Minimum amount |
|---|---|
| Below $2 | $1 |
| $2 to $5 | 2 |
| Above $5 to $10 | 3 |
| Above $10 to $50 | 5 |
| Above $50 to $100 | 7 |
| Above $100 | 10 |

Upon taking final action, MarketWatch shall promptly notify both parties to the trade electronically or via telephone.

(g) No change.

* * * * *

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposal is to help market participants better manage their risk by addressing the situation where, under current rules, a trade can be adjusted to a price outside of a Public Customer's limit. Specifically, the Exchange proposes to amend Chapter V, Section 6(f) to enable a Public Customer who is the contra-side to a trade that is deemed to be a catastrophic error to have the trade nullified in instances where the adjusted price would violate the Public Customer's limit price. Only if the Public Customer, or his agent, affirms the customer's willingness to accept the adjusted price through the customer's limit price within 20 minutes of notification of the catastrophic error ruling would the trade be adjusted; otherwise it would be nullified. Today, all catastrophic error trades are adjusted, not nullified, on all of the options exchanges, except on NASDAQ OMX PHLX LLC (''PHLX''), on whose provision this proposal is modeled.[3]

Background

Currently, Chapter V, Section 6 governs obvious and catastrophic errors. Obvious errors are calculated under the rule by determining a theoretical price and determining, based on objective standards, whether the trade should be nullified or adjusted. The rule also contains a process for requesting an obvious error review. Certain more substantial errors may fall under the category of a catastrophic error, for which a longer time period is permitted to request a review and for which trades can only be adjusted (not nullified). Trades are adjusted pursuant to an adjustment table that, in effect, assesses an adjustment penalty. By adjusting trades above or below the theoretical price plus or minus a certain amount, the rule assesses a ''penalty'' in that the adjustment price is not as favorable as the amount the party making the error would have received had it not made the error.

Proposal

At this time, the Exchange proposes to change the catastrophic error process to permit certain trades to be nullified. The definition and calculation of a catastrophic error would not change.[4] Once a catastrophic error is determined by a BX Official, then if both parties to the trade are not a Public Customer,[5] the

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* PHLX Rule 1092(f)(ii). Securities Exchange Act Release No. 69304 (April 4, 2013), 78 FR 21482 (April 10, 2013) (SR–Phlx–2013–05).

[4] Nor is the definition or process for obvious errors changing. However, the Exchange proposes to add reference to ''catastrophic'' errors to the title of the provision to better reflect its content and match that of other options exchanges.

[5] Chapter I, Section 1(a)(50) defines a Public Customer as person that is not a broker or dealer in securities. Professional Customers are Public

Continued

trade would be adjusted under the current rule. If one of the parties is a Public Customer, then the adjusted price would be compared to the limit price of the order. If the adjusted price would violate the limit price (in other words, be higher than the limit price if it is a buy order and lower than the limit price if it is a sell order), then the Public Customer would be offered an opportunity to nullify the trade. If the Public Customer (or the Public Customer's broker-dealer agent) does not respond within 20 minutes, the trade would be nullified.

These changes should ensure that a Public Customer is not forced into a situation where the original limit price is violated and thereby the Public Customer is forced to spend additional dollars for a trade at a price the Public Customer had no interest in trading and may not be able to afford.

*EXAMPLE 1*—Resting Public Customer forced to adjust through his limit price and would prefer nullification

**Day 1**

8:00:00 a.m. (pre-market)
Public Customer A enters order on BX to buy 10 GOOG May 750 puts for $25 (cost of $25,000, Public Customer has $50,000 in his trading account).
10:00:00 a.m.
GOOG trading at $750
May 750 puts $29.00–$31.00 (100x100) on all exchanges
10:04:00 a.m.
GOOG drops to $690
May 750 puts $25–$100 (10x10) BX
May 750 puts $20–$125 (10x10) CBOE
May 750 puts $10–$200 (100x100) on all other exchanges
10:04:01 a.m.
Public Customer B enters order to sell 10 May 750 puts for $25 (credit of $25,000)
10:04:01 a.m.
10 May 750 puts execute at $25 ($35 under parity)[6] with Public Customer A buying and Public Customer B selling.
10:04:02 a.m. (1 second later)
GOOG trading $690
May 750 puts $75–$78 (100x100) BX
May 750 puts $75–$80 (10x10) CBOE
May 750 puts $70–$80 (100x100) All other exchanges
No obvious error is filed within 20 minute notification time required by rule. If this had been an obvious error review, the trade would have been nullified in accordance with Chapter V, Section 6 because one of the parties to the trade was not an Options Participant.
4:00:00 p.m. (the close)
GOOG trading $710
May 750 puts $60–$63 (100x100) BX
May 750 puts $55–$70 (10x10) CBOE
May 750 puts $50–$70 (100x100) All other exchanges

**Day 2**

8:00:00 a.m. (pre-market)
Public Customer B, submits S10 GOOG May 750 puts at $25 under Catastrophic Review.

Trade meets the criteria of Catastrophic Error and is adjusted to $68 ($75 (the 10:04:02 a.m. price) less $7 adjustment penalty).

9:30:00 a.m. (the opening)
GOOG trading $725
May 750 puts open $48.00–$51.00 (100x100) on all exchanges
Under current rule:
Without a choice, Public Customer A is forced to spend $68 (for a total cost of $68,000, with only $25,000 in his account)
Puts are now trading $48, so Public Customer A shows a loss of $20,000 ($68 less $48x10 contracts x 100 multiplier)
Under proposed rule:
Public Customer A would be able to choose to have the B10 GOOG May 750 puts nullified avoiding both a loss, and an expenditure of capital exceeding the amount in his account. Public Customer B would be relieved of the obligation to sell the puts at 25 because the trade would be nullified.

*EXAMPLE 2*—Resting Public Customer trades, sells out his position, and chooses to keep the adjusted trade and avoid nullification

**Day 1**

8:00:00 a.m. (pre-market)
Public Customer A enters order on BX to Buy 10 BAC April 7.00 calls for $.01 (cost of $10 total). (Customer has $3,000 in his account).
10:00:00 a.m.
BAC trading $11
April 7 calls $4.50-$4.70 (100x100) on all exchanges
10:04:00 a.m.
BAC Trading $11
April 7 calls $.01–$4.70 (10x10) BX
April 7 calls $4.50–$4.70 (10x10) CBOE
April 7 calls $4.50–$4.70 (10x10) All other exchanges
10:04:01 a.m.
Public Customer B enters order to sell 10 April 7 calls at $.01 on BX with an ISO indicator (which allows trade through)
10:04:01 a.m.
10 April 7 calls execute at $.01 on BX Public Customer A buying and Public Customer B selling.
10:04:02 a.m. (1 second later)
BAC is $11
April 7 calls $4.50–$4.70 (10x10) BX
April 7 calls $4.50–$4.70 (10x10) CBOE
April 7 calls $4.50–$4.70 (10x10) All other exchanges
No obvious error is filed within 20 minute notification time required by rule. If this had been an obvious error review, the trade would have qualified as an obvious error and been nullified or adjusted.
11:00:00 a.m.
BAC trading $9.60
April 7 calls $3.00–$3.25 (10x10) BX
April 7 calls $3.00–$3.25 (10x10) CBOE
April 7 calls $3.00–$3.25 (10x10) All other exchanges
Public Customer A sells 10 April 7 calls at $3.00 (a total credit of $3,000 for a $2,990 profit)
3:00:00 p.m.
BAC trading $12.80
April 7 calls $5.80–$6.00 (10x10) BX
April 7 calls $5.80–$6.00 (10x10) CBOE
April 7 calls $5.80–$6.00 (10x10) All other exchanges
Public Customer A has now no position and would be at risk of a loss if nullified.
3:20:00 p.m.
Public Customer B submits S10 BAC April 7 calls at $.01 under Catastrophic Error Review.
Trade meets the criteria of Catastrophic Error and is adjusted to $2.50 ($4.50 (the 10:04:02 a.m. price) less $2 adjustment penalty).
Impact:
Under current Rule: Public Customer A would be adjusted to $2.50 ($4.50 (the 10:04:02 a.m. price) less $2 adjustment penalty).
Under Proposed rule:
Illustrating the need for a choice, Public Customer A chooses within 20 minutes to accept an adjustment to $2.50 instead of a nullification, locking in a gain of $500 instead of $2.990 (B 10 at $2.50 vs. S10 at $3.00).
If not given a choice, Public Customer A would be naked short 10 calls at $3.00 that are now offered at $6.00 (a $3,000 loss).

These examples illustrate the need for Public Customer to have a choice in

Customers, for purposes of Chapter V, Section 6. *See* Chapter I, Section 1(a)(49).

[6] Parity is the intrinsic value of an option when it is in-the-money. With respect to puts, it is calculated by subtracting the price of the underlying from the strike price of the put. With respect to calls, it is calculated by subtracting the strike price from the price of the underlying.

order to manage his risk. By applying a notification time limit of 20 minutes, it lessens the likelihood that the customer will try to let the direction of the market for that option dictate his decision for a long period of time, thus exposing the contra side to more risk. This 20 minute time period is akin to the notification period currently used in the rule respecting obvious errors (as opposed to catastrophic errors).[7]

For a market maker or a broker-dealer, the penalty that is part of the price adjustment process is usually enough to offset the additional dollars spent, and they can often trade out of the position with little risk and a potential profit. For a customer who is not immersed in the day-to-day trading of the markets, this risk may be unacceptable. A customer is also less likely to be watching trading activity in a particular option throughout the day and less likely to be closely focused on the execution reports the customer receives after a trade is executed. Accordingly, the Exchange believes that it is fair and reasonable, and consistent with statutory standards, to change the procedure for catastrophic errors for Public Customers and not for other participants.

The Exchange believes that the proposal is a fair way to address the issue of a customer's limit price, yet still balance the competing interests of certainty that trades stand versus dealing with true errors. Earlier this year, PHLX amended its Rule 1092(f) to adopt the same catastrophic error process as proposed herein. In approving that proposal, the Commission stated ''. . . the Exchange has weighed the benefits of certainty to non-broker-dealer customers that their limit price will not be violated against the costs of increased uncertainty to market makers and broker-dealers that their trades may be nullified instead of adjusted depending on whether the other party to the transaction is or is not a customer. The proposed rule change strikes a similar balance on this issue to the approach taken in the Exchange's Obvious Error Rule, whereby transactions in which an Obvious Error occurred with at least one party as a non-specialist are nullified unless both parties agree to adjust the price of the transaction within 30 minutes of being notified of the Obvious Error.'' [8]

The Exchange is proposing to amend Chapter V, Section 6 to eliminate the risk associated with Public Customers receiving an adjustment to a trade that is outside of the limit price of their order, when there is a catastrophic error ruling respecting their trade. The new provision would continue to entail specific and objective procedures. Furthermore, the new provision more fairly balances the potential windfall to one market participant against the potential reconsideration of a trading decision under the guise of an error.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [9] in general, and furthers the objectives of Section 6(b)(5) of the Act [10] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by helping Exchange members better manage the risk associated with potential erroneous trades. Specifically, the Exchange believes that the proposal is consistent with these principles because it provides a fair process for Public Customers to address catastrophic errors involving a limit order. In particular, the proposal permits nullification in certain situations. Further, it gives customers a choice. For two reasons, the Exchange does not believe that the proposal is unfairly discriminatory, even though it offers some participants (Public Customers) a choice as to whether a trade is nullified or adjusted, while other participants will continue to have all of their catastrophic errors adjusted. First, with respect to obvious errors (as opposed to catastrophic errors), the rule currently differentiates among Participants and whether a trade is adjusted or busted depends on whether an Options Participant is involved.[11] Second, options rules often treat customers in a special way,[12] recognizing that customers are not necessarily immersed in the day-to-day trading of the markets, less likely to be watching trading activity in a particular option throughout the day and may have limited funds in their trading accounts. Accordingly, differentiating among Participant types by permitting customers to have a choice as to whether to nullify a trade involving a catastrophic error is not unfairly discriminatory, because it is reasonable and fair to provide non-professional customers with additional options to protect themselves against the consequences of obvious errors.

The Exchange acknowledges that the proposal contains some uncertainty regarding whether a trade will be adjusted or nullified, depending on whether one of the parties is a Public Customer, because a person would not know, when entering into the trade, whether the other party is or is not a Public Customer. The Exchange believes that the proposal nevertheless promotes just and equitable principles of trade and protects investors and the public interest, because it eliminates a more serious uncertainty in the rule's operation today, which is price uncertainty. Today, a customer's order can be adjusted to a significantly different price, as the examples above illustrate, which is more impactful than the possibility of nullification. Furthermore, there is uncertainty in the current obvious error portion of Chapter V, Section 6 (as well as the rules of other options exchanges), which Participants have dealt with for a number of years. Specifically, Chapter V, Section 6(e)(i) and (ii) provide: Where each party to the transaction is an Options Participant, the execution price of the transaction will be adjusted to the prices provided in subparagraphs (A) and (B) below unless both parties agree to adjust the transaction to a different price or agree to bust the trade within ten (10) minutes of being notified by MarketWatch of the Obvious Error; where at least one party to the Obvious Error is not an Options Participant, the trade will be nullified unless both parties agree to an adjustment price for the transaction within 30 minutes of being notified by MarketWatch of the Obvious Error.

Therefore, a Participant who prefers adjustments over nullification cannot guarantee that outcome, because, if he trades with a non-Participant, a resulting obvious error would only be adjusted if such non-Participant agreed to an adjustment. This uncertainty has been embedded in the rule and accepted by market participants. The Exchange believes that this proposal, despite the uncertainty based on whether a Public Customer is involved in a trade, is nevertheless consistent with the Act, because the ability to nullify a Public Customer's trade involving a catastrophic error should prevent the price uncertainty that mandatory adjustment under the current rule creates, which should promote just and

[7] *See* Chapter V, Section 6(e)(i) [sic]. If a party believes that it participated in a transaction that was the result of an Obvious Error, it must notify MarketWatch via written or electronic complaint within 20 minutes of the execution.

[8] *See supra* note 3.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] *See* Chapter V, Section 6(e)(i).

[12] For example, many options exchange priority rules treat customer orders differently and some options exchanges only accept certain types of orders from customers. Most options exchanges charge different fees for customers.

equitable principles of trade and protect investors and the public interest.

The proposal sets forth an objective process based on specific and objective criteria and subject to specific and objective procedures. In addition, the Exchange has again weighed carefully the need to assure that one market participant is not permitted to receive a windfall at the expense of another market participant that made a catastrophic error, against the need to assure that market participants are not simply being given an opportunity to reconsider poor trading decisions. Accordingly, the Exchange has determined that introducing a nullification procedure for catastrophic errors is appropriate and consistent with the Act.

Consistent with Section 6(b)(8),[13] the Exchange also believes that the proposal does not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act, as described further below.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Currently, most options exchanges have similar, although not identical, rules regarding catastrophic errors. To the extent that this proposal would result in BX's rule being different, market participants may choose to route orders to BX, helping BX compete against other options exchanges for order flow based on its customer service by having a process more responsive to current market needs. Of course, other options exchanges may choose to adopt similar rules. The proposal does not impose a burden on intra-market competition not necessary or appropriate in furtherance of the purposes of the Act, because, even though it treats different market participants differently, the Obvious Errors rule has always been structured that way and adding the ability for Public Customers to choose whether a catastrophic error trade is nullified does not materially alter the risks faced by other market participants in managing the consequences of obvious errors. Overall, the proposal is intended to help market participants better manage the risk associated with potential erroneous options trades and does not impose a burden on competition.

[13] 15 U.S.C. 78f(b)(5).

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[14] and subparagraph (f)(6) of Rule 19b–4 thereunder.[15]

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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BX–2013–042 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.

[14] 15 U.S.C. 78s(b)(3)(a)(ii).

[15] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

All submissions should refer to File Number SR–BX–2013–042. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2013–042 and should be submitted on or before August 26, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–18750 Filed 8–2–13; 8:45 am]

**BILLING CODE 8011–01–P**

[16] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–70066; File No. SR–NYSE–2013–53]**

## Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Modifying the Content of the NYSE Trades Digital Media Data Feed

July 30, 2013.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3]

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

notice is hereby given that on July 18, 2013, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to revise the description of the NYSE Trades Digital Media data feed. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to revise the description of the NYSE Trades Digital Media data feed.

In 2009, the Securities and Exchange Commission (''Commission'') approved the NYSE Trades data feed and certain fees for it.[4] NYSE Trades is a NYSE-only market data feed that allows a vendor to redistribute on a real-time basis the same last sale information that the Exchange reports under the Consolidated Tape Association (''CTA'') Plan for inclusion in the CTA Plan's consolidated data streams and certain other related data elements. Specifically, NYSE Trades includes the real-time last sale price, time, size, and bid/ask quotations for each security traded on the Exchange and a stock summary message. The stock summary message updates every minute and includes NYSE's opening price, high price, low price, closing price, and cumulative volume for the security.

In April 2013, the Exchange began offering a new version of NYSE Trades called ''NYSE Trades Digital Media,'' which was described as including the real-time last sale price, time, size, and stock summary message for each security traded on the Exchange, but not including access to the bid/ask quotation included with the NYSE Trades product.[5] At that time, the Exchange believed that it could efficiently remove the bid/ask information from the feed but has since determined that the time and resources required to do so would be significant and not commensurate with the need for the change. As such, the NYSE Trades Digital Media product is offered with the bid/ask component included, and as such does not have different content than the regular NYSE Trades data fee. The only difference between the products is the permitted distribution channels. NYSE Trades Digital Media permits market data vendors, television broadcasters, Web site and mobile device service providers, and others to distribute the data product to their customers for viewing via television, Web site, and mobile devices. They are not be [sic] permitted to provide NYSE Trades Digital Media in a context in which a trading or order routing decision can be implemented unless CTA data is available in an equivalent manner, must label the products as NYSE-only data, and must provide a hyperlinked notice similar to the one provided for CTA delayed data. These restrictions do not apply to the NYSE Trades product.

No other changes to the data components, terms, or pricing of any product are proposed.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[6] of the Act, in general, and furthers the objectives of Section 6(b)(5)[7] of the Act, in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and it is not designed to permit unfair discrimination among customers, brokers, or dealers.

The Exchange offers the NYSE Trades Digital Media data product in recognition of the demand for a more seamless and easier-to-administer data distribution model that takes into account the expanded variety of media and communication devices that investors utilize today. As described above, the Exchange has determined that the expense of creating and monitoring a new feed without the bid-ask element is not warranted. No other aspect of the NYSE Trades or NYSE Trades Digital Media offering is being changed.

In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to consumers of such data. It was believed that this authority would expand the amount of data available to users and consumers of such data and also spur innovation and competition for the provision of market data. The Exchange believes that the data products proposed herein are precisely the sort of market data products that the Commission envisioned when it adopted Regulation NMS. The Commission concluded that Regulation NMS—by lessening regulation of the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition:

> [E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.[8]

By removing ''unnecessary regulatory restrictions'' on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history.

The Exchange further notes that the existence of alternatives to the Exchange's products, including real-time consolidated data, free delayed consolidated data, and proprietary data

[4] *See* Securities Exchange Act Release No. 59606 (Mar. 19, 2009), 74 FR 13293 (Mar. 26, 2009) (SR–NYSE–2009–04).

[5] *See* Securities Exchange Act Release No. 69272 (Apr. 2, 2013), 78 FR 20983 (Apr. 8, 2013) (SR–NYSE–2013–23).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (File No. S7–10–04).

from other sources, ensures that the Exchange is not unreasonably discriminatory because vendors and subscribers can elect these alternatives. In addition, the proposal would not permit unfair discrimination because the product will be available to all of the Exchange's vendors and customers on an equivalent basis.

*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 market for proprietary data products is currently competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary data is produced by each individual exchange, as well as other entities (such as internalizing broker-dealers and various forms of alternative trading systems, including dark pools and electronic communication networks), in a vigorously competitive market. It is common for market participants to further and exploit this competition by sending their order flow and transaction reports to multiple markets, rather than providing them all to a single market.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2013–53 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–2013–53. 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–NYSE–2013–53 and should be submitted on or before August 26, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–18754 Filed 8–2–13; 8:45 am]

**BILLING CODE 8011–01–P**

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires 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.

[11] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–70070; File No. SR–BOX–2013–037]**

## Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend BOX Rule 4170 (Options Communications)

July 30, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 15, 2013, BOX Options Exchange LLC (''BOX'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend BOX Rule 4170 (Options Communications) to conform the rule to changes recently made by the Financial Industry Regulatory Authority, Inc. (''FINRA'') to its corresponding rule.[3] The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 68650 (Jan. 14, 2013), 78 FR 4182 (Jan. 18, 2013) (Notice of Immediate Effectiveness of SR–FINRA–2013–001).

Exchange's Internet Web site at *http://boxexchange.com.*

## 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 proposed to update Exchange Rule 4170 (Options Communications) to conform the rule to changes recently made by FINRA to its corresponding rule.[4] This filing is also based on a proposal recently submitted by Chicago Board Options Exchange, Inc. (''CBOE'') and approved by the Commission.[5]

The proposed changes to BOX Rule 4170 (Options Communications) are designed to alert Participants to their requirements with respect to Options Communications while further regulating all communications for compliance with BOX Rules and the Act.

First, the proposed rule change would amend BOX Rule 4170(a) to reduce the number of defined categories of communication from six (in the current rule) to three. The proposed three categories of communications are: Retail communications, correspondence, and institutional communications. Current definitions of ''sales literature,'' ''advertisement,'' and ''independently prepared reprint'' are combined into a single category of ''retail communications.'' Thus, the Exchange proposes to define ''retail communication'' as ''any written (including electronic) communication that is distributed or made available to more than 25 retail investors within any 30-calendar-day period.'' The Exchange also proposes to update the definition of ''correspondence'' to ''any written (including electronic) communication distributed or made available by a Participant to 25 or fewer retail customers within any 30-calendar-day period.'' Finally, the Exchange proposes to define, ''institutional communication'' to include written (including electronic) communications that are distributed or made available only to institutional investors.

Second, the Exchange proposes to amend Rule 4170(b), ''Approval by Registered Options Principal'' to replace the phrase ''advertisements, sales literature, and independently prepared reprints'' in Rule 4170(b)(i) with the new proposed term, ''retail communications.''

Under proposed Rule 4170(b)(ii), correspondence would ''need not be approved by a Registered Options Principal prior to use'' but would be subject to the supervision and review requirements of BOX Rule 4030. The current rule requires principal approval of correspondence that is distributed to 25 or more existing retail customers within a 30-calendar-day period that makes any financial or investment recommendation or otherwise promotes the product or service of a Participant. Under proposed Rule 4170(b), such communications would be considered retail communications and therefore would be subject to the principal approval requirement. As such, the proposed change would not substantively change the scope of options communications that would require principal approval.

Third, the Exchange proposes to modify the required approvals of ''Institutional communications'' by adding that a Participant shall ''establish written procedures that are appropriate to its business, size, structure, and customers for review by a Registered Options Principal of institutional communications used by the Participant.''

Fourth, the Exchange proposes to amend Rule 4170(c) to replace the phrase ''advertisements, sales literature, and independently prepared reprints'' with the new proposed term, ''retail communications.'' The Exchange also proposes to further exempt options disclosure documents and prospectuses from Exchange review as other requirements apply to these documents under the Securities Act of 1933 (the ''Securities Act'').

Fifth, the Exchange proposes to specify in Rule 4170(d) that Order Flow Providers (''OFP'') or associated persons may not use any options communications that ''constitute a prospectus'' unless the communications meet the requirements of the Securities Act. Finally, the Exchange proposes to move and slightly modify Rule 4170(d) to state that any statement made referring to ''potential opportunities or advantages presented by options'' must also be accompanied by a statement identifying the potential risks posed.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[6] in general, and Section 6(b)(5) of the Act,[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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.

In particular, the Exchange believes the proposed rule changes will help Participants that are also members of FINRA and/or CBOE to comply with their obligations regarding options communications by better aligning the Exchange's requirements with those of FINRA and CBOE.[8] In addition, the Exchange believes that the proposed rule change will help ensure that investors are protected from potentially false or misleading communications with the public distributed by Participants.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In this regard and as indicated above, the Exchange notes that the rule change being proposed is substantially similar to a filing submitted by the CBOE and recently approved by the Commission.[9] The Exchange believes that establishing uniform rules regarding Options Communications will enable

[4] *See* Exchange Act Release No. 68650 (Jan. 14, 2013), 78 FR 4182 (Jan. 18, 2013) (Notice of Immediate Effectiveness of SR–FINRA–2013–001). The Exchange also proposes certain changes in Rule 4170 to conform with aspects of the FINRA rule that predated the recent FINRA amendment and were not changed by that amendment.

[5] *See* Exchange Act Release No. 69807 (June 20, 2013), 78 FR 38423 (June 26, 2013) (Order Approving of SR–CBOE–2013–043).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5). Form 19b–4 as filed by BOX inadvertently referred to Section 6(b)(4). This change was approved per email by Lisa Fall of BOX, in an email from Kristen Tierney (BOX) to Alicia Goldin (SEC) on July 29, 2013 (''July 29 email'').

[8] This statement was modified from the Form 19b–4 filed by BOX, per the July 29 email, *supra* note 7.

[9] *See supra,* note 5.

Participants to more efficiently carry out their supervisory and other compliance obligations.[10]

Specifically, the proposed rule change will merely bring clarity and consistency to Exchange Rules. The Exchange does not believe the proposed rule change will impose any burden on any intra-market competition as it applies to all Participants. In addition, the Exchange does not believe the proposed rule filing will bring any unnecessary burden on inter-market competition as it is consistent with the FINRA ''Options Communications'' rule.[11]

*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 comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

BOX has filed the proposed rule change pursuant to Section 19(b)(3)(A)[12] of the Act and Rule 19b–4(f)(6) thereunder.[13] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[14] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii)[15] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. BOX has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will it will ensure fair competition among the exchanges by allowing the Exchange to conform with changes recently made by FINRA. For these reasons, the Commission designates the proposed rule change to be operative upon filing.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BOX–2013–037 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BOX–2013–037. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method.

The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, on official business days between the hours of 10:00 a.m. and 3:00 p.m., located at 100 F Street NE., Washington, DC 20549. 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–BOX–2013–037 and should be submitted on or before August 26, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–18759 Filed 8–2–13; 8:45 am]

**BILLING CODE 8011–01–P**

[10] This statement was modified from the Form 19b–4 filed by BOX, per the July 29 email, *supra* note 7.

[11] *See supra,* note 3.

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] For purposes of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. *See* 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[File No. 500–1]**

## In the Matter of Zenergy International, Inc., Order of Suspension of Trading

August 1, 2013.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Zenergy International, Inc. because it has not filed any periodic reports since the period ended June 23, 2009.

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. EDT on August 1, 2013, through 11:59 p.m. EDT on August 14, 2013.

By the Commission.

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 2013–18917 Filed 8–1–13; 4:15 pm]

BILLING CODE 8011–01–P

## DEPARTMENT OF STATE

**[Public Notice 8408]**

### 30-Day Notice of Proposed Information Collection: Nonimmigrant Treaty Trader/Investor Application

**ACTION:** Notice of request for public comment and submission to OMB of proposed collection of information.

**SUMMARY:** The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

**DATES:** Submit comments directly to the Office of Management and Budget (OMB) up to September 4, 2013.

**ADDRESSES:** Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *Email: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

**FOR FURTHER INFORMATION CONTACT:** Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Sydney Taylor, who may be reached at *PRA_BurdenComments@state.gov.*

**SUPPLEMENTARY INFORMATION:**

- *Title of Information Collection:* Nonimmigrant Treaty Trader/Investor Application
- *OMB Control Number:* OMB–1405–0101
- *Type of Request:* Extension of a Currently Approved Collection
- *Originating Office:* CA/VO/L/R
- *Form Number:* DS–156E
- *Respondents:* Nonimmigrant Treaty/Trader Investor
- *Estimated Number of Respondents:* 41,752
- *Estimated Number of Responses:* 41,752
- *Average Time per Response:* 4 hours
- *Total Estimated Burden Time:* 167,008
- *Frequency:* Once per Respondent
- *Obligation to Respond:* Required to Obtain Benefit

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

*Abstract of proposed collection:*

Section 101(a)(15)(E) of the Immigration and Nationality Act (INA) includes provisions for the nonimmigrant classification of a national of a country with which the United States maintains an appropriate treaty of commerce and navigation who is coming to the United States to: (i) Carry on substantial trade, including trade in services or technology, principally between the United States and the treaty country; or (ii) develop and direct the operations of an enterprise in which the national has invested, or is actively in the process of investing. Form DS–156E is completed by foreign nationals seeking nonimmigrant treaty trader/investor visas to the United States. The Department will use the DS–156E to elicit information necessary to determine a foreign national's visa eligibility.

*Methodology:*

After completing Form DS–160, Online Nonimmigrant Visa Application (or, if the DS–160 is unavailable, the DS–156, Nonimmigrant Visa Application), applicants will fill out the DS–156E online, print the form, and submit it in person or via mail.

Dated: July 29, 2013.

**Don Heflin,**

*Deputy Assistant Secretary (Acting), Bureau of Consular Affairs, Department of State.*

[FR Doc. 2013–18867 Filed 8–2–13; 8:45 am]

BILLING CODE 4710–06–P

## DEPARTMENT OF STATE

**[Public Notice 8407]**

### Waiver of Restriction on Assistance to the Central Government of Tajikistan

Pursuant to Section 7031(b)(3) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2012 (Div. I, Pub. L.112–74) (''the Act''), as carried forward by the Further Continuing Appropriations Act, 2013 (Div. F, Pub. L. 113–6), and Department of State Delegation of Authority Number 245–1, I hereby determine that it is important to the national interest of the United States to waive the requirements of Section 7031(b)(1) of the Act and similar provisions of law in prior year Acts with respect to Tajikistan, and I hereby waive this restriction.

This determination and the accompanying Memorandum of Justification shall be reported to the Congress, and the determination shall be published in the **Federal Register**.

Dated: Jun 17, 2013.

**William J. Burns,**

*Deputy Secretary of State.*

[FR Doc. 2013–18859 Filed 8–2–13; 8:45 am]

BILLING CODE 4710–46–P

## DEPARTMENT OF STATE

**[Public Notice 8405]**

### Waiver of Restriction on Assistance to the Central Government of Turkmenistan

Pursuant to Section 7031(b)(3) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2012 (Div. I, Pub. L. 112–74) (''the Act''), as carried forward by the Further Continuing Appropriations Act, 2013, (Div. F, Pub. L. 113–6) and Department of State Delegation of Authority Number 245–1, I hereby determine that it is important to the national interest of the United States to waive the requirements of Section 7031(b)(1) of the Act with respect to Turkmenistan, and I hereby waive this restriction.

This Determination and the accompanying Memorandum of Justification shall be reported to the

Congress, and the determination shall be published in the **Federal Register**.

Dated: June 24, 2013.

**William J. Burns,**

*Deputy Secretary of State.*

[FR Doc. 2013–18864 Filed 8–2–13; 8:45 am]

**BILLING CODE 4710–46–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Nineteenth Meeting: RTCA Special Committee 214/EUROCAE WG–78: Standards for Air Traffic Data Communication Services

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

**ACTION:** RTCA Special Committee 214 held jointly with EUROCAE WG–78: Standards for Air Traffic Data Communication Services meeting.

**SUMMARY:** The FAA is issuing this notice to advise the public of nineteenth meeting of RTCA Special Committee 214 to be held jointly with EUROCAE WG–78: Standards for Air Traffic Data Communication Services.

**DATES:** The meeting will be held August 26–30, from 9:00 a.m. to 5:00 p.m.

ADDRESS: The meeting will be held at EASA, Ottoplatz 1, D–50679 KOLN, Germany.

**FOR FURTHER INFORMATION CONTACT:** Sophie Bousquet, 202–330–0663, *sbousquet@rtca.org* or The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.*

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of Special Committee 214/EUROCAE WG–78: Standards for Air Traffic Data Communication Services. The agenda will include the following:

**August 26–30, 2013**

- Welcome, Introductions, and Administrative Remarks
- Approval of Agenda
- Approval of the minutes of 16, 17 and 18 (Plenary 18 was RTCA only) and review action items
- Coordination activities- ICAO OPLINK/ACP
- Sub-Group Sessions (Tuesday, Wednesday and Friday)
- Configuration Sub-Group Report & Assignment of Action Items
- Status of Standards:
- Review of Position Papers and Contributions
- DO–280B/ED–110B Change 1 (FRAC Comments and Resolution)
- DO–281B Change 1 and DO–224C Change 1 (Release for FRAC/RTCA only)
- Baseline 2 Standards (Release for FRAC/Open Consultation), considering:
  - Request from FAA to revise scope and timelines of Baseline 2 Standards,
  - Inter-Special Committee Requirements Agreement (ISRA) with SC–227/WG–85,
  - Proposal from Configuration and Validation Sub-Groups to remove FIS application from scope of Baseline 2 standards.
- Upcoming meetings, dates and locations of Plenary and SG meetings
- Other Business
- Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on July 24, 2013.

**Paige L. Williams,**

*Management Analyst, Business Operations Group, ANG–A12, Federal Aviation Administration.*

[FR Doc. 2013–18858 Filed 8–2–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

**[Docket No. FHWA–2013–0012]**

### Notice of Funding Availability for the Tribal Transportation Program Safety Funds

**AGENCY:** Federal Highway Administration (FHWA), Department of Transportation (DOT).

**ACTION:** Notice of funding availability.

**SUMMARY:** This notice announces the availability of funding and requests grant applications for FHWA's Tribal Transportation Program Safety Funds (TTPSF). In addition, this notice addresses comments received on the interim notice of funding availability (Docket No. FHWA–2013–0012), announces selection criteria, application requirements, and technical assistance during the grant solicitation period for the TTPSF.

The TTPSF is authorized within the Tribal Transportation Program (TTP) under the Moving Ahead for Progress in the 21st Century Act (MAP–21). The FHWA will distribute these funds as described in this final notice on a competitive basis in a manner consistent with the selection criteria.

On April 30, 2013, FHWA published an interim notice that announced funding availability. Because this is a new program, the interim notice also requested comments on the proposed selection and evaluation criteria. The FHWA considered the comments that were submitted in accordance with the interim notice. The FHWA's response to the comments and revisions made in this final notice are described below in the **SUPPLEMENTARY INFORMATION** section. In the event that this solicitation does not result in the award and obligation of all available funds, FHWA may decide to publish an additional solicitation.

**DATES:** Applications must be submitted through Grants.gov no later than 5 p.m. e.t. on September 19, 2013 (the ''Application Deadline''). Applicants are encouraged to submit applications in advance of the Application Deadline, however, applications will not be evaluated, and awards will not be made until after the Application Deadline.

The FHWA plans to conduct outreach regarding the TTPSF in the form of a Webinar on August 8, 2013, at 2:00 e.t., (participants can pre-register online at: *http://www.nhi.fhwa.dot.gov/resources/webconference/web_conf_learner_reg.aspx?webconfid=26241*). The Webinar will be recorded and posted on FHWA's Web site at: *http://www.flh.fhwa.dot.gov/programs/ttp/*.

**ADDRESSES:** Applications must be submitted electronically through Grants.gov. The FHWA will not accept applications that are sent directly to FHWA outside of the Grants.gov process. Instructions for submitting through Grants.gov are included in Section V(E) of this final notice.

**FOR FURTHER INFORMATION CONTACT:** For further information concerning this notice please contact Russell Garcia, TTPSF Program Manager, via email at *russell.garcia@dot.gov*; by telephone at 202–366–9815; or by mail at Federal Highway Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Office hours are from 8:30 a.m. to 5:00 p.m. e.t., Monday through Friday, except Federal holidays. A TDD is available for individuals who are deaf or hard of hearing at 202–366–3993. For

legal questions, please contact Ms. Vivian Philbin, Office of the Chief Counsel, by telephone at (720) 963–3445; by email at *vivian.philbin@dot.gov*; or by mail at Federal Highway Administration, Central Federal Lands Highway Division, 12300 West Dakota Avenue, Lakewood, CO 80228. Office hours are from 7:30 a.m. to 4:00 p.m. m.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:** On April 30, 2013, FHWA published an interim notice announcing the availability of funding for the TTPSF. Because this is a new program, the interim notice also requested comments on the proposed selection and evaluation criteria in awarding TTPSF grants. The FHWA considered the six comments that were submitted in accordance with the interim notice and revised some elements of the selection criteria as described below.

**Response to Comments**

This final notice addresses comments and revises the interim notice published on April 30, 2013, (Docket No. FHWA–2013–0012) as follows:

1. This final notice clarifies the types of projects eligible for funding under the four TTPSF funding categories. This clarification is in response to: (1) Comments that asked FHWA to include examples of eligible projects and activities for each TTPSF funding category, and (2) specific questions regarding the eligibility of multimodal projects, bus inspection facilities, and projects and activities that would be eligible under the Safe Routes to School Program.

2. The FHWA received comments concerning the use of Grants.gov as part of the application process. Commenters expressed concern that Grants.gov is cumbersome, that Indian tribes may not be familiar with this process, and that Indian tribes may not have reliable Internet access. Grants.gov is the mandated system for accessing Federal funds. The FHWA will provide technical assistance, as needed, to TTPSF applicants during the solicitation period. The FHWA will also address the use of Grants.gov during the TTPSF Webinars.

3. The FHWA received a comment expressing concern over the role of the Bureau of Indian Affairs (BIA) in providing technical assistance, and stewardship and oversight of TTPSF grants. The FHWA will help to coordinate any necessary BIA assistance including working with BIA on the TTPSF funding process and program requirements.

4. This final notice revises the funding limits for safety planning activities. However, due to the limited amount of funding availability, and the desire to fund as many tribal safety plans as possible, FHWA reminds applicants that the evaluation of safety planning activities as well as the evaluation of engineering improvements, enforcement and emergency services improvements, and education programs, all include leveraging TTPSF funds with other (private or public) funding sources.

5. The FHWA received a comment expressing a desire for flexibility in funding goals for each eligibility category. The FHWA believes there is sufficient funding flexibility in each of the funding categories and, therefore, no change is necessary.

6. The FHWA received a comment to consider substituting the phrase ''activities or projects'' for ''projects'' in all cases. The FHWA believes that the phrase ''projects'' is broadly defined in Sections I (Background) and IIB (Eligible Uses of Funds) which include strategies, activities, and projects on a public road and therefore, no change is necessary.

This is the final notice; FHWA is no longer considering comments on the proposed selection and evaluation criteria for TTPSF. This final notice is the operative notice of funding availability, selection and evaluation criteria, application requirements, and technical assistance during the grant solicitation period for the TTPSF.

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VII. Consultation

**I. Background**

On July 6, 2012, President Obama signed into law MAP–21 (Pub. L. 112–141), which authorizes TTPSF as a set aside of not more than 2 percent of the funds made available under the TTP for each of Federal Fiscal Years (FY) 2013 and 2014. Section 202(e) of title 23, United States Code (U.S.C.), provides that the funds are to be allocated based on an identification and analysis of highway safety issues and opportunities on tribal lands, as determined by the Secretary, on application of the Indian tribal governments for eligible projects described in 23 U.S.C. 148(a)(4). Eligible projects described in section 148(a)(4) include strategies, activities, and projects on a public road that are consistent with a State strategic highway safety plan and correct or improve a hazardous road location or feature, or address a highway safety problem.

Section 202(e) further specifies that in applying for TTPSF, an Indian tribal government, in cooperation with the Secretary of the Interior and, as appropriate, with a State, local government, or metropolitan planning organization, shall select projects from the transportation improvement program (TIP), subject to the approval of the Secretary of Transportation and the Secretary of the Interior.

**II. Eligibility**

*A. Entities Eligible To Apply for Funding*

Section 202(e) specifies that TTPSF are to be made available to Indian tribal governments. Accordingly, consistent with other FHWA funding provided to tribes, any federally recognized tribe identified on the list of ''Indian Entities Recognized and Eligible to Receive Services from the Bureau of Indian Affairs'' (published at 77 FR 47868) is eligible to apply for TTPSF.

*B. Eligible Uses of Funds*

Under section 202(e), projects for which Indian tribal governments may apply are highway safety improvement projects eligible under the Highway Safety Improvement Program as described in 23 U.S.C. 148(a)(4). Projects eligible for funding may include strategies, activities, or projects on a public road that are consistent with a State Strategic Highway Safety Plan (SHSP) and correct or improve a hazardous road location or feature, or address a highway safety problem.[1] This

[1] Examples of eligible HSIP projects include but are not limited to the projects set for in 23 U.S.C. 148(a)(4)(B).

includes infrastructure and non-infrastructure strategies, activities or projects including education activities. For purposes of the TTPSF, for a project to be consistent with a State's SHSP it must be data-driven or address a priority in an applicable tribal transportation safety plan that considers the priorities and strategies addressed in the State SHSP. To be considered eligible for TTPSF, roadway or transportation facilities improvement projects also must be: (1) Included in the tribe's official National Tribal Transportation Facility Inventory, as identified in 23 U.S.C. 202(b)(1), and (2) listed in the TIP.

## III. Selection Criteria and Policy Considerations

The FHWA will award TTPSF funds based on the selection criteria and policy considerations as outlined below.

The FHWA shall give priority consideration to eligible projects under 23 U.S.C. 148(a)(4) that fall within one of the following four categories: (1) Safety planning activities; (2) engineering improvements; (3) enforcement and emergency services improvements; and (4) education programs. The priority categories were determined in consultation with the Tribal Transportation Program Coordinating Committee (TTPCC) [2] and are intended to strengthen safety planning activities in tribal transportation while also directing resources to needed safety improvements. The categories are also consistent with the FHWA SHSP for Indian Lands which has as its mission to, ''Implement effective transportation safety programs to save lives while respecting Native American culture and tradition by fostering communication, coordination, collaboration, and cooperation.'' [3] These categories are also consistent with the Tribal Safety Management Implementation Plan (TSMIP). The TSMIP recognizes that, ''tribal safety plans are an essential component and an effective planning tool for prioritizing and implementing safety solutions.'' [4] The TSMIP also states that ''reducing highway fatalities and serious injuries with any sustained success requires that all four elements (4Es) of highway safety be addressed—engineering, enforcement, education, and emergency services. A Tribal Safety Program, whether large or small, should work to address the 4Es, and its foundation, data.''

The FHWA will allocate the TTPSF among the four categories as follows: (1) Safety planning activities (40 percent); (2) engineering improvements (30 percent); (3) enforcement and emergency services improvements (20 percent); and (4) education programs (10 percent). These funding goals were established with the TTPCC and will be reviewed annually and may be adjusted to reflect current tribal transportation safety priorities and needs. These proposed allocation amounts provide substantial funding for tribal safety plans to reflect the strong need that has been identified in this area and to ensure that all tribes have an opportunity to assess their safety needs and prioritize safety projects. The remaining proposed allocation amounts were established based on the significant need for transportation related capital improvement projects, while still allowing for applications that would cover all 4Es of safety.

### *A. Safety Planning Activities (Funding Goal 40 Percent of TTPSF)*

The development of a tribal safety plan that is data driven, identifies transportation safety issues, prioritizes activities, is coordinated with the State SHSP and promotes a comprehensive approach to addressing safety needs by including all 4Es is a critical step in improving highway safety. Additional information on developing a tribal safety plan can be found at: *http://flh.fhwa.dot.gov/programs/ttp/safety/*.

Accordingly, FHWA will award TTPSF for developing and updating tribal safety plans, and other safety planning activities. Eligible uses of funds are described in Section II of this notice and example projects are listed in 23 U.S.C. 148(a)(4), which can be found at: *http://www.fhwa.dot.gov/map21/docs/title23usc.pdf*.

The FHWA will use the following criteria in the evaluation of TTPSF funding requests for tribal safety plans: (1) Development of a tribal safety plan where none currently exists; and (2) age and status of existing tribal safety plans. The FHWA will use the following criteria in the evaluation of TTPSF funding requests for safety planning activities: (1) Inclusion of the activity in a completed State SHSP or tribal transportation safety plan that is no more than 5 years old; (2) submission of supporting data that clearly demonstrates the need for the activity; (3) leveraging of private or other public funding;

(4) extent to which the project compliments a comprehensive approach to safety and addresses elements of the 4Es.

Examples of eligible safety planning activities include, but are not limited to:

- Development of tribal transportation safety plans;
- Collection, analysis, and improvement of safety data; and
- Road safety assessments.

### *B. Engineering Improvements (Funding Goal 30 Percent of TTPSF)*

Eligible uses of funds are described in Section II of this notice and example projects are listed in 23 U.S.C. 148(a)(4) which can be found at: *http://www.fhwa.dot.gov/map21/docs/title23usc.pdf*.

The FHWA will use the following criteria in the evaluation of funding requests for engineering improvements: (1) Inclusion of the activity in a completed State SHSP or tribal transportation safety plan that is no more than 5 years old; (2) inclusion of the activity in a completed road safety audit, engineering study, impact assessment or other engineering document; (3) submission of supporting data that clearly demonstrates the need for the project; (4) ownership of the facility; (5) leveraging of private or other public funding; (6) years since the tribe has last received funding for an TTPSF engineering improvement project; (7) extent to which the project compliments a comprehensive approach to safety and addresses elements of the 4Es.

Examples of eligible engineering improvement projects include, but are not limited to:

- Intersection safety improvements;
- Pavement and shoulder widening (including addition of a passing lane to remedy an unsafe condition);
- Installation of rumble strips or another warning device, if the rumble strips or other warning devices do not adversely affect the safety or mobility of bicyclists and pedestrians, including persons with disabilities;
- Installation of a skid-resistant surface at an intersection or other location with a high frequency of crashes;
- Improvements for pedestrian or bicyclist safety or safety of persons with disabilities;
- Construction and improvement of railway-highway grade crossing safety feature;
- Installation of protective devices;
- Construction of a traffic calming feature;

[2] The TTPCC is a committee established in 25 CFR part 170 and is charged with providing input and recommendations to the Bureau of Indian Affairs (BIA) and FHWA in developing TTP policies and procedures. Its members are appointed by the Secretary of the Interior and represent all 12 BIA Regions. Tribal consultation is described further in Section VIII of this notice.

[3] The Strategic Safety Plan of Indian Lands is available at: *http://flh.fhwa.dot.gov/programs/ttp/safety/documents/strategic-hsp.pdf*

[4] The SMS Implementation Plan is available at: *http://flh.fhwa.dot.gov/programs/ttp/safety/documents/sms-implementation.pdf*.

• Elimination of a roadside hazard;
• Installation, replacement, and other improvement of highway signage and pavement markings, or a project to maintain minimum levels of retroreflectivity that addresses a highway safety;
• Installation of a traffic control or other warning device at a location with high crash potential;
• Installation of guardrails, barriers (including barriers between construction work zones and traffic lanes for the safety of road users and workers), and crash attenuators;
• The addition or retrofitting of structures or other measures to eliminate or reduce crashes involving vehicles and wildlife;
• Installation of yellow-green signs and signals at pedestrian and bicycle crossings and in school zones;
• Construction and operational improvements on high risk rural roads;
• Geometric improvements to a road for safety purposes that improve safety;
• Roadway safety infrastructure improvements consistent with the recommendations included in the publication of the Federal Highway Administration entitled 'Highway Design Handbook for Older Drivers and Pedestrians';
• Truck parking facilities eligible for funding under section 1401 of the MAP–21;
• Systemic safety improvements; and
• Transportation-related safety projects for modes such as trails, docks, boardwalks, ice roads, and others that are eligible for TTP funds.

*C. Enforcement and Emergency Services Improvements (Funding Goal 20 Percent of TTPSF)*

Eligible uses of funds are described in Section II of this notice and example projects are listed in 23 U.S.C. 148(a)(4) which can be found at: *http://www.fhwa.dot.gov/map21/docs/title23usc.pdf.*

The FHWA will use the following criteria in the evaluation of funding requests for enforcement and emergency services improvements: (1) Inclusion of the activity in a completed State SHSP or tribal transportation safety plan that is no more than 5 years old; (2) submission of supporting data that clearly demonstrates the need for the project; (3) leveraging of private or other public funding; (4) extent to which the project compliments a comprehensive approach to safety and addresses elements of the 4Es.

Examples of eligible enforcement and emergency services improvement activities include, but are not limited to:
• The conduct of a model traffic enforcement activity at a railway-highway crossing;
• Installation of a priority control system for emergency vehicles at signalized intersections; and
• Planning integrated interoperable emergency communications equipment, operational activities, or traffic enforcement activities (including police assistance) relating to work zone safety.

*D. Education Programs (Funding Goal 10 Percent of TTPSF)*

Eligible uses of funds are described in Section II of this notice and example projects are listed in 23 U.S.C. 148(a)(4) which can be found at: *http://www.fhwa.dot.gov/map21/docs/title23usc.pdf.*

The FHWA will use the following criteria in the evaluation of funding requests for education projects: (1) Inclusion of the activity in a completed State SHSP or tribal transportation safety plan that is no more than 5 years old; (2) submission of supporting data that clearly demonstrates the need for the project; (3) leveraging of private or other public funding; (4) extent to which the project compliments a comprehensive approach to safety and addresses elements of the 4Es.

Examples of eligible education activities include, but are not limited to:
• Safety Management System Implementation Plan activities;
• Public service announcements; and
• Programs implemented to inform the public or address behaviors that affect transportation safety.

**IV. Evaluation Process**

The TTPSF grant applications will be evaluated in accordance with the below discussed evaluation process. The FHWA will establish an evaluation team to review each application received by FHWA prior to the Application Deadline. The evaluation team will be led by FHWA and will include members from the BIA. The team will include technical and professional staff with relevant experience and expertise. The evaluation teams will be responsible for evaluating and rating all of the projects and making funding recommendations.

All applications will be evaluated and assigned a rating of ''Highly Qualified,'' ''Qualified,'' or ''Not Qualified.'' The ratings, as defined below, are proposed within each priority funding category as follows:

1. Safety Plans and Safety Planning Activities

a. *Highly Qualified Safety Plans:* requests (up to a maximum of $12,500) for development of new tribal safety plans or to update incomplete tribal safety plans and requests (up to a maximum of $7,500.00) to update existing tribal safety plans that are more than 3 years old; significant leverage with other funding.

b. *Qualified:* requests for other safety planning efforts that are in a current State SHSP or tribal safety plan; and are part of a comprehensive approach including other safety efforts.

c. *Not Qualified:* projects that do not meet the eligibility requirements; any request to update an existing tribal safety plan that is less than 3 years old; projects that are not included in a State SHSP or tribal safety plan or do not have a comprehensive approach to safety with other partners.

If the number of applications rated as ''highly qualified'' exceed the amount of available funding, FHWA will give priority funding consideration to requests for development of new tribal safety plans.

2. Engineering Improvements

a. *Highly Qualified:* efforts that are in a current State SHSP or tribal safety plan; data included in the application that directly supports the project; project is in a current road safety audit, engineering study, impact assessment, or other engineering study; projects located on a BIA or Tribal facility; significant leverage with other funding; the tribe has not received funding for a safety construction project in more than 10 years or the project is part of a comprehensive approach to safety which includes three or more other safety efforts.

b. *Qualified:* efforts that are in a current State SHSP or tribal safety plan, but the plan is more than 5 years old; some data included in the application that supports the project; project is in a road safety audit, engineering study, impact assessment, or other engineering study that is more than 5 years old; project is located on a transportation facility not owned by a tribe or BIA; some leveraging with other funding; the tribe has not received funding for a safety construction project in the last 10 years or the projects is part of a coordinated approach with one to two other safety efforts.

c. *Not Qualified:* projects that do not meet the eligibility requirements; are not included in a State SHSP or tribal safety plan; no data provided in the application to support the request; are not included in a road safety audit, engineering study, impact assessment, or other engineering study; have received funding for a safety construction project within the last 2

years or do not have a comprehensive approach to safety with other partners.

If the number of applications rated as ''highly qualified'' exceed the amount of available funding, FHWA will give priority funding consideration to those applicants that have provided sufficient data that supports the project and indicates that the project is included in a road safety audit or other engineering study that clearly identifies the improvements that are needed.

3. Enforcement and Emergency Services

a. *Highly Qualified:* efforts that are in a current State SHSP or tribal safety plan; data included in the application that directly supports the requested project, significant leverage with other funding or are part of a comprehensive approach to safety, including three or more other safety efforts.

b. *Qualified:* efforts that are in a current State SHSP or tribal safety plan but the plan is more than 5 years old; some data included in the application that supports the project; some leveraging with other funding or are coordinated with one to two other safety efforts.

c. *Not Qualified:* projects that do not meet the eligibility requirements; are not included in a State SHSP or tribal safety plan; no data provided in the application that supports the project does not have a comprehensive approach to safety with other partners.

If the number of applications rated as ''highly qualified'' exceed the amount of available funding, FHWA will give priority funding consideration to those applicants that have provided sufficient data that supports the project and indicates that the project is included in an existing transportation safety plan

4. Education Programs

a. *Highly Qualified:* efforts that are in a current State SHSP or tribal safety plan; data included in the application that directly supports the requested project; significant leverage with other funding or are part of a comprehensive approach to safety including three or more other safety efforts.

b. *Qualified:* efforts that are in a current State SHSP or tribal safety plan but the plan is more than 5 years old; some data included in the application that supports the project; some leveraging with other funding or are coordinated with one to two other safety efforts.

c. *Not Qualified:* projects that do not meet the eligibility requirements; are not included in a State SHSP or tribal safety plan; no data provided in the application that supports the project does not have a comprehensive approach to safety with other partners.

If the number of applications rated as ''highly qualified'' exceed the amount of available funding, FHWA will give priority funding consideration to those applicants that have provided sufficient data that supports the project and shown the project is included in an existing transportation safety plan.

## V. Application Process

### *A. Contents of Applications*

The applicants must include all of the information requested below in their applications. The FHWA may request any applicant to supplement the data in its application, but encourages applicants to submit the most relevant and complete information the applicant could provide. The FHWA also encourages applicants, to the extent practicable, to provide data and evidence of project merits in a form that is publicly available or verifiable.

A complete application must consist of: (1) The Standard Form 424 (SF 424) available from Grants.gov; and (2) the narrative attachment to the SF 424 as described below.

### *B. Standard Form 424, Application for Federal Assistance*

Applicants should see *www.grants.gov/assets/SF424Instructions.pdf* for instructions for completing the SF 424, which is part of the standard Grants.gov submission.

### *C. Narrative (Attachment to SF 424)*

Applicants must attach a supplemental narrative to their submission in Grants.gov to successfully complete the application process. Once completed, the applicant must include the supplemental narrative in the attachments section of the SF 424 mandatory form.

The applicant must identify in the project narrative the eligibility category under which the project identified in the application fits. The applicant also would respond to the application requirements proposed below. The FHWA recommends that the application be prepared with standard formatting preferences (e.g. a single-spaced document, using a standard 12-point font, such as Times New Roman, with 1-inch margins).

An application must include any information needed to verify that the project meets the statutory eligibility criteria as well as other information required for FHWA to assess each of the criteria specified in Section III (*Selection Criteria).* Applicants are required to demonstrate the responsiveness of their proposal to any pertinent selection criteria with the most relevant information that applicants could provide, regardless of whether such information is specifically requested, or identified, in the final notice. Applicants should provide concrete evidence of project milestones, financial capacity and commitment in order to support project readiness.

Consistent with the requirements for an eligible highway safety improvement project under 23 U.S.C. 148(a)(4), applicants must describe clearly how the project would correct or improve a hazardous road location or feature or would address a highway safety problem. The application must include supporting data.

For ease of review, FHWA recommends that the project narrative generally adhere to the following basic outline, and include a table of contents, project abstract, maps, and graphics:

1. *Project Abstract:* Describe project work that would be completed under the project, the hazardous road location or feature or the highway safety problem that the project would address, and whether the project is a complete project or part of a larger project with prior investment (maximum five sentences). The project abstract must succinctly describe how this specific request for TTPSF would be used to complete the project.

2. *Project Description:* (Including information on the expected users of the project, a description of the hazardous road location or feature or the highway safety problem that the project would address, and how the project would address these challenges);

3. Applicant information and coordination with other entities (identification of the Indian tribal government applying for TTPSF, description of cooperation with other entities in selecting projects from the TIP as required under 23 U.S.C. 202(e)(2), information regarding any other entities involved in the project);

4. Grant Funds and Sources/Uses of Project Funds (information about the amount of grant funding requested for the project, availability/commitment of funds sources and uses of all project funds, total project costs, percentage of project costs that would be paid for with the TTPSF, and the identity and percentage shares of all parties providing funds for the project (including Federal funds provided under other programs));

5. A description of how the proposal meets the Selection Criteria identified in Section III (*Selection Criteria and Policy Considerations*) and the statutory

eligibility criteria as described in Section II (*Eligibility*).

*D. Contact Information*

The applicant must include contact information requested as part of the SF–424. The FHWA will use this information if additional application information is needed or to inform parties of FHWA's decision regarding selection of projects. Contact information should be provided for a direct employee of the lead applicant. Contact information for a contractor, agent, or consultant of the lead applicant is insufficient for FHWA's purposes.

*E. Additional Information on Applying Through Grants.gov*

Applications for TTPSF must be submitted through Grants.gov. To apply for funding through Grants.gov, applicants must be properly registered. Complete instructions on how to register and apply can be found at *www.grants.gov.* If interested parties experience difficulties at any point during registration or application process, they should call the Grants.gov Customer Support Hotline at 1–800–518–4726, Monday–Friday from 7:00 a.m. to 9:00 p.m. e.t.

Registering with Grants.gov is a one-time process; however, processing delays may occur and it can take up to several weeks for first-time registrants to receive confirmation and a user password. Accordingly, FHWA highly recommends that potential applicants start the registration process as early as possible to prevent delays that may preclude submitting an application by the deadlines specified. Applications will not be accepted after the relevant due date; delayed registration is not an acceptable reason for extensions. In order to apply for TTPSF under this announcement and to apply for funding through Grants.gov, all applicants are required to complete the following:

1. Acquire a Data Universal Numbering System (DUNS) Number. A DUNS number is required for Grants.gov registration. The Office of Management and Budget requires that all applicants for Federal funds include a DUNS number in their applications for a new award or renewal of an existing award. A DUNS number is a unique nine-digit sequence recognized as the universal standard for identifying and keeping track of entities receiving Federal funds. The identifier is used for tracking purposes and to validate address and point of contact information for Federal assistance applicants, recipients, and sub-recipients. The DUNS number will be used throughout the grant life cycle. Obtaining a DUNS number is a free, one-time activity that can be completed by calling 1–866–705–5711 or by applying online at *http://fedgov.dnb.com/webform.*

2. Acquire or Renew Registration with the Central Contractor Registration (CCR) Database. All applicants for Federal financial assistance maintain current registrations in the CCR database. An applicant must be registered in the CCR to successfully register in Grants.gov. The CCR database is the repository for standard information about Federal financial assistance applicants, recipients, and sub-recipients. Entities that have previously submitted applications via Grants.gov are already registered with CCR, as it is a requirement for Grants.gov registration. Please note, however, that applicants must update or renew their CCR registration at least once per year to maintain an active status, so it is critical to check registration status well in advance of relevant application deadlines. Information about CCR registration procedures can be accessed at: *https://www.sam.gov/portal/public/SAM/.*

3. Acquire an Authorized Organization Representative (AOR) and a Grants.gov Username and Password. Applicants will need to complete an AOR profile on Grants.gov and create a username and password. The assigned DUNS Number is required to complete this step. For more information about the registration process, go to: *www.grants.gov/applicants/get_registered.jsp.*

4. Acquire Authorization for the AOR from the E-Business Point of Contact (E-Biz POC). The E-Biz POC for the tribe must log in to Grants.gov to confirm the applicant as an AOR. Please note that there can be more than one AOR for your tribe.

5. Search for the Funding Opportunity on Grants.gov. Applicants would use the Catalog of Federal Domestic Assistance number for this solicitation is 20.205, titled Highway Planning and Construction, when searching for the TTPSF opportunity on Grants.gov.

6. Submit an Application Addressing All of the Requirements Outlined in this Funding Availability Announcement. Within 24 to 48 hours after submitting an electronic application, applicants should receive an email validation message from Grants.gov. The validation message will specify whether the application has been received and validated or rejected, with an explanation. Applicants are encouraged to submit applications at least 72 hours prior to the due date of the application to allow time to receive the validation message and to correct any problems that may have caused a rejection notification.

**Note:** When uploading attachments, applicants should use generally accepted formats such as .pdf, .doc, and .xls. While applicants may imbed picture files such as .jpg, .gif, .bmp, in your files, they should not save and submit the attachment in these formats. Additionally, the following formats will not be accepted: .com, .bat, .exe, .vbs, .cfg, .dat, .db, .dbf, .dll, .ini, .log, .ora, .sys, and .zip.

*F. Experiencing Unforeseen Grants.gov Technical Issues*

If an applicant experiences unforeseen Grants.gov technical issues beyond its control that prevent the submission of an application by the established deadline, such applicant must contact Grants.gov.

To ensure a fair competition for limited TTPSF, the following conditions are not valid reasons to permit late submissions: (1) Failure to complete the registration process before the deadline date; (2) failure to follow Grants.gov instructions on how to register and apply as posted on its Web site; (3) failure to follow all of the instructions in the funding availability notice; and (4) technical issues experienced with the applicant's computer or information technology environment.

## VI. Program Funding and Award

Section 1101 of MAP–21 authorized $450,000,000 for the TTP for each of FY 2013 and 2014. Section 1119 of MAP–21 amends 23 U.S.C. 202(e) to provide that not more than 2 percent of such funds made available for the TTP may be allocated for TTPSF. Accordingly, FHWA expects that a maximum of $9,000,000 could be made available in each of FYs 2013 and 2014 for TTPSF. The FHWA anticipates high demand for this limited amount of funding and encourages applications for modest-sized, scalable requests that allow more tribes to receive funding.

## VII. Consultation Process

The DOT issued Order 5301.1, ''Department of Transportation Programs, Policies, and Procedures Affecting American Indians, Alaska Natives, and Tribes'' on November 16, 1999. This Order affirmed the DOT's and its Modal Administrations' unique legal relationship with Indian tribes, established DOT's consultation and coordination process with Indian tribes for any action that may significantly or uniquely affect them, and listed goals for Modal Administrations to meet when carrying out policies, programs, and activities affecting American

Indians, Alaska Natives, and tribes. The Department affirms its commitment to these principles, and those set forth in Executive Order 13175 and the President's November 5, 2009, memorandum in establishing the DOT Consultation Plan dated March 4, 2010, and found at: *http://www.dot.gov/sites/dot.dev/files/docs/Tribal%20Consultation%20Plan.pdf*

In furtherance of these documents pertaining to consultation, FHWA informally consulted with the TPPCC in categorizing the eligible activities and determining funding priorities as described herein. In addition to soliciting comments on this notice, FHWA expects to provide other outreach opportunities with tribes through webinars in advance of publication of a final notice of funding availability.

**Authority:** Section 1119 of Pub. L. 112–141; 23 U.S.C. 202(e).

Issued on: July 29, 2013.

**Victor M. Mendez,**

*FHWA Administrator.*

[FR Doc. 2013–18769 Filed 8–2–13; 8:45 am]

**BILLING CODE 4910–22–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

### Sunshine Act Meetings; Unified Carrier Registration Plan Board of Directors

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

**ACTION:** Notice of Unified Carrier Registration Plan Board of Directors Meeting.

**TIME AND DATE:** The meeting will be held on August 29, 2013, from 12:00 Noon to 3:00 p.m., Eastern Daylight Time.

**PLACE:** This meeting will be open to the public via conference call. Any interested person may call 1–877–820–7831, passcode, 908048 to listen and participate in this meeting.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:** The Unified Carrier Registration Plan Board of Directors (the Board) will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement and to that end, may consider matters properly before the Board.

**FOR FURTHER INFORMATION CONTACT:** Mr. Avelino Gutierrez, Chair, Unified Carrier Registration Board of Directors at (505) 827–4565.

Issued on: July 25, 2013.

**Larry W. Minor,**

*Associate Administrator, Office of Policy, Federal Motor Carrier Safety Administration.*

[FR Doc. 2013–18916 Filed 8–1–13; 11:15 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

**[Safety Advisory 2013–05]**

### Joint Failure on Continuous Welded Rail Track

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Notice of safety advisory.

**SUMMARY:** FRA is issuing Safety Advisory 2013–05 to remind railroad track owners about the importance of reviewing current, internal continuous welded rail (CWR) plans and properly inspecting CWR joints to identify and correct locations that indicate potential joint failure that may cause a derailment. FRA is issuing this notice in response to two recent train derailments. Although the causes of these derailments are still under investigation, preliminary evidence suggests that failed joint bars played a significant role in both derailments. This notice reminds railroad track owners that they must comply with the requirements of their CWR plan procedures regarding inspecting track to identify indications of potential joint failure in CWR track, especially that of compromise joints. This notice also recommends that railroad track owners review their CWR plans to ensure that the instructions properly identify the necessary track maintenance procedures to remedy indications of potential joint failure that lead to rapid failure of joint bars. Finally, the notice recommends that railroad track owners follow good maintenance practices to ensure the joints are adequately supported and, wherever possible, eliminate joints in CWR, especially compromise joints in passenger and hazardous material routes.

**FOR FURTHER INFORMATION CONTACT:** Mr. Kenneth Rusk, Staff Director, Track Division, Office of Railroad Safety, FRA, 1200 New Jersey Avenue SE., Washington, DC 20590, telephone (202) 493–6236; Mr. Carlo M. Patrick, Staff Director, Rail and Infrastructure Integrity Division, Office of Railroad Safety, FRA, 1200 New Jersey Avenue SE., Washington, DC 20590, telephone (202) 493–6399; or Ms. Elisabeth Galotto, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue SE., Washington, DC 20590, telephone (202) 493–0270.

**SUPPLEMENTARY INFORMATION:** Joints in CWR are considered one of the weakest elements of track structure. The track components at a joint are subject to stresses in vertical, lateral, and longitudinal planes. Although the number of CWR joint-caused derailments on a main line has been relatively small, these derailments can be catastrophic, especially if passenger trains or hazardous materials are involved. Recent accidents highlight the need for track owners, railroads, and their respective employees to review, reemphasize, and adhere to the requirements of a track owner's CWR plan procedures and current internal engineering instructions that address inspecting track to identify stress conditions in CWR joints.

FRA requires that a track owner comply with the contents of an approved or conditionally approved CWR plan under Title 49 Code of Federal Regulations (CFR) Section 213.118, *Continuous welded rail (CWR), plan review and approval.*[1] *See* § 213.119, *Continuous welded rail (CWR), plan contents.* The plan must include procedures that prescribe the scheduling and conduct of inspections to detect cracks and other indications of potential failures in CWR joints. *See* § 213.119(h). These procedures are required to specify the conditions of actual or potential joint failure for which railroad personnel must inspect, including, at a minimum, (i) loose, bent, or missing joint bolts; (ii) rail end batter or mismatch that contributes to instability of the joint; and (iii) evidence of excessive longitudinal rail movement in or near the joint, including, but not limited to: wide rail gap, defective joint bolts, disturbed ballast, surface deviations, gap between tie plates and rail, or displaced rail anchors. *See* § 213.119(h)(3).

**Recent Incidents**

This section provides a brief summary of the circumstances surrounding two recent train derailments that appear to be related to joint bar failure in CWR. Information regarding these incidents is based on FRA and the respective railroad's preliminary findings to date. The probable causes and contributing factors, if any, have not yet been established. Therefore, nothing in this safety advisory is intended to attribute

[1] All references in this notice to a section or other provision of a regulation are to a section, part, or other provision in 49 CFR, unless otherwise specified.

a cause to these incidents, or place responsibility for these incidents on the acts or omissions of any person or entity.

On May 17, 2013, at approximately 6:08 p.m., an eastbound Metro-North Commuter Railroad (Metro-North) train derailed near Bridgeport, CT. A portion of the derailed train fouled the adjacent track and was struck by a westbound Metro-North commuter train. Sixty-nine people were reportedly injured and damages to the equipment and track amounted to several million dollars. At the accident, a pair of broken compromise joint bars was found. The National Transportation Safety Board is currently investigating the derailment and will ultimately determine the cause of the accident.

On March 18, 2013, an empty Long Island Rail Road (LIRR) passenger train derailed in Forest Hill, Queens, NY. Four of the train's eight cars derailed while traveling 75 mph. The railroad's preliminary investigation determined the cause to be a broken joint bar.

**Recommended Action**

Rail joints in CWR warrant special attention and maintenance. Adequate support (which includes good tie condition, sufficient ballast, and good drainage) is essential to preventing joint bar failure. FRA recommends that track owners and railroads:

1. Review the requirements of their CWR plans and train employees responsible for inspecting CWR, with a focus on inspecting CWR track to identify conditions of actual or potential joint failure.

2. Review current internal engineering instructions to ensure that the instructions contain the appropriate track maintenance instructions to remedy joint conditions that cause joint bars to fail and cause derailments.

3. Follow good maintenance practices to ensure the joints are adequately supported, in addition to all of the requirements prescribed in § 213.119. Ties under and adjacent to CWR joints must be capable of supporting the traffic loading. When spot tamping the joints by hand, joints should be raised at least 1 inch to ensure the ballast particles are properly tamped under the entire width of ties. If the tamping is conducted in hot weather without immediate mechanical track stabilization, as is the case with machine tamping, a speed restriction is required to reduce the risk of track buckling.

4. Perform appropriate ballast maintenance to ensure proper track drainage for adequate tie support.

5. Wherever possible, eliminate joints in CWR, especially compromise joints in passenger and hazardous materials routes.

6. Reinforce with employees responsible for inspecting track the importance of the proper installation and maintenance of joints by ensuring that sufficient anchoring, ballast, and ties ensure the integrity of the joint. This is especially important around compromise joints, which by design typically have a suspended joint configuration.

7. If joint bars (and particularly compromise joint bars) are found cracked or broken between the middle two bolt holes after a relatively short time after installation, determine the root cause that led to the premature failure of the joint bars and correct the deficiency.

FRA strongly encourages railroads and track owners to take actions that are consistent with the preceding recommendations to help ensure the safety of the Nation's railroad employees and the public. FRA may modify Safety Advisory 2013–05, issue additional safety advisories, or take other appropriate actions it deems necessary to ensure the highest level of safety on the Nation's railroads, including pursuing other corrective measures under its rail safety authority.

**Robert C. Lauby,**

*Deputy Associate Administrator for Regulatory and Legislative Operations.*

[FR Doc. 2013–18787 Filed 8–2–13; 8:45 am]

BILLING CODE 4910–06–P

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

**[Docket No. FTA–2012–0029]**

### Notice of Proposed Buy America Waiver

**AGENCY:** Federal Transit Administration, DOT.

**ACTION:** Notice of proposed Buy America waiver and request for comment.

**SUMMARY:** The Federal Transit Administration (FTA) received a request for a waiver to permit the purchase of minivans that are non-compliant with FTA Buy America requirements using FTA funding. The request is from the North Front Range Metropolitan Planning Organization (NFRMPO). NFRMPO is in the process of procuring vehicles for its vanpool program, ''VanGo.''

In accordance with 49 U.S.C. 5323(j)(3)(A), FTA is providing notice of the waiver request and seeks public comment before deciding whether to grant the request. If granted, the waiver would be for the Buy America final assembly requirement only and would apply only to the FTA-funded procurement by NFRMPO.

**DATES:** Comments must be received by September 4, 2013. Late-filed comments will be considered to the extent practicable.

**ADDRESSES:** Please submit your comments by one of the following means, identifying your submissions by docket number FTA–2013–0027:

1. *Web site: http://www.regulations.gov.* Follow the instructions for submitting comments on the U.S. Government electronic docket site.

2. *Fax:* (202) 493–2251.

3. *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.

4. *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Instructions:* All submissions must make reference to the ''Federal Transit Administration'' and include docket number FTA–2013–0027. Due to the security procedures in effect since October 2011, mail received through the U.S. Postal Service may be subject to delays. Parties making submissions responsive to this notice should consider using an express mail firm to ensure the prompt filing of any submissions not filed electronically or by hand. Note that all submissions received, including any personal information therein, will be posted without change or alteration to *http://www.regulations.gov.* For more information, you may review DOT's complete Privacy Act Statement in the **Federal Register** published April 11, 2000 (65 FR 19477), or you may visit *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Mary J. Lee, FTA Attorney-Advisor, at (202) 366–0985 or *mary.j.lee@dot.gov.*

**SUPPLEMENTARY INFORMATION:** The purpose of this notice is to provide notice and seek comment on whether the Federal Transit Administration (FTA) should a grant non-availability waiver for NFRMPO's procurement of minivans or similar vehicles (minivans). If granted, the waiver would be limited to the Buy America final assembly requirement under 49 U.S.C. 5323(j)(2)(C)(ii) and 49 CFR 661.11.

With certain exceptions, FTA's Buy America requirements prevent FTA from obligating an amount that may be appropriated to carry out its program for a project unless ''the steel, iron, and manufactured goods used in the project are produced in the United States.'' 49 U.S.C. 5323(j)(1). For rolling stock procured with FTA funds, this means that ''the cost of components and subcomponents produced in the United States [must] be more than 60 percent of the cost of all components of the rolling stock; and . . . final assembly of the rolling stock has occurred in the United States.'' 49 U.S.C. 5323(j)(2)(C); 49 CFR 661.11(a). If, however, FTA determines that ''the steel, iron, and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality,'' then FTA may issue a waiver (non-availability waiver). 49 U.S.C. 5323(j)(2)(B); 49 CFR 661.7(c).

On June 21, 2010, in response to formal requests from ElDorado National-Kansas (ElDorado) and the Chrysler Group LLC (Chrysler), FTA waived its Buy America final assembly requirement for minivans and minivan chassis after determining through notice and comment that no manufacturer of minivans or minivan chassis performed final assembly in the United States. 75 FR 35123.

Subsequently, on August 3, 2012, FTA issued a notice in the **Federal Register** seeking comments on a request by the Vehicle Production Group (VPG) for FTA to rescind the Buy America waiver for minivans and minivan chassis. 75 FR 35124. According to VPG, it was able to manufacture a wheelchair accessible vehicle, the Mobility Vehicle 1 (MV–1), substantially similar to a minivan and in a sufficient quantity that was, and still is, Buy America compliant with respect to both domestic content and final assembly.

On December 3, 2012, FTA rescinded the waiver for minivans and minivan chassis after determining that a blanket waiver was no longer necessary. 77 FR 71676. In this notice, FTA carefully considered all of the comments received by the various stakeholders through the United States in order to address concerns, including the differences between the MV–1's accessibility features and traditional minivans, inadequate seating capacity when the vehicles are used for vanpool services, as well as others. FTA determined, however, that these concerns could be addressed with individual waiver requests on a case-by-case basis as the need arose and a blanket waiver was no longer necessary.

On July 1, 2013, FTA made two separate determinations that Braun Corporation (Braun) and ElDorado National-Kansas' (ElDorado) manufacturing processes on incomplete Chrysler and Dodge minivans met FTA's Buy America requirements for final assembly.[1] These determinations on final assembly activities were made in response to formal requests by Braun and ElDorado pursuant to section (c) of Appendix D to 661.11 (of 49 CFR).

Now, FTA has received a request for a Buy America waiver for minivans from the North Front Range Metropolitan Planning Organization (NFRMPO). NFRMPO operates a vanpool (''VanGo'') program, which has 75 vans with routes connecting, among others, Fort Collins, Loveland, Greeley, Denver, and Boulder, Colorado. The VanGo program carries more than 420 commuters daily in the northern Colorado area at 93 percent occupancy. All of the vanpools in the VanGo program carry five to eight passengers. According to NFRMPO, this makes the large 10–15 passenger vans inefficient and too costly. In a recently issued request for proposals for minivans, NFRMPO received no qualified proposals for vehicles that meet Buy America requirements for rolling stock and seat at least seven passengers. Therefore, NFRMPO requests that FTA grant a Buy America waiver for its procurement of minivans based upon non-availability.

The purpose of this notice is to publish NFRMPO request and seek public comment from all interested parties in accordance with 49 U.S.C. 5323(j)(3)(A). Comments will help FTA understand completely the facts surrounding the request, including the effects of a potential waiver and the merits of the request. A full copy of the request has been placed in docket number FTA–2013–0027.

Issued on August 1, 2013.

**Dorval R. Carter, Jr.,**

*Chief Counsel.*

[FR Doc. 2013–18814 Filed 8–2–13; 8:45 am]

**BILLING CODE 4910–57–P**

[1] *http://www.fta.dot.gov/legislation_law/about_FTA_598.html; http://www.fta.dot.gov/documents/Imanse_re_Chrysler_Buy_America.pdf.*

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[U.S. DOT Docket No. NHTSA–2013–0085]**

### Reports, Forms, and Record Keeping Requirements

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Request for public comment on proposed collection of information.

**SUMMARY:** Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatements of previously approved collections.

This document describes the collection of information for which NHTSA intends to seek OMB approval.

**DATES:** Comments must be received on or before October 4, 2013.

**ADDRESSES:** You may submit comments identified by DOT Docket ID Number NHTSA–2013–0085 using any of the following methods:

Electronic submissions: Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

Mail: Docket Management Facility, M–30, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.

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 number 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.

*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 (65 FR

19477–78) or you may visit *http://DocketsInfo.dot.gov.*

**FOR FURTHER INFORMATION CONTACT:** Mr. Alan Block, Office of Behavioral Safety Research (NTI–131), National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., W46–499, Washington, DC 20590. Mr. Block's phone number is 202–366–6401 and his email address is *alan.block@dot.gov.*

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) 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;

(ii) 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;

(iii) how to enhance the quality, utility, and clarity of the information to be collected; and

(iv) how 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, e.g., permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks public comment on the following proposed collection of information:

**Focus Groups for Traffic Safety Programs, Interventions and Countermeasures**

*Type of Request*—Renewal.

*OMB Clearance Number*—2127–0667.

*Form Number*—This collection of information uses no standard form.

*Requested Expiration Date of Approval*—3 years from date of approval.

*Summary of the Collection of Information*—The National Highway Traffic Safety Administration (NHTSA) proposes to renew its generic clearance to conduct focus groups. NHTSA anticipates the need to periodically conduct focus group sessions to refine its efforts to reduce traffic injuries and fatalities. Session participation would be voluntary and the focus group participants would receive remuneration for their involvement. Focus group topics will include: strategic messaging (e.g., slogans or advertisement concepts concerning seat belt use, impaired driving, driver distraction, tire pressure monitoring), problem identification (e.g., discussions with high-risk groups on beliefs, attitudes, driving behaviors, or reactions to interventions and countermeasures), and resource development (e.g., testing materials designed to communicate essential information about traffic safety issues such as vehicle or equipment performance rating systems). For each focus group project, NHTSA will submit an individual Information Collection Request (ICR) to the Office of Management and Budget (OMB) detailing the specific nature and methodology of planned focus group sessions prior to any collection activity covered under this generic clearance.

*Description of the Need for the Information and Proposed Use of the Information*—NHTSA was established by the Highway Safety Act of l970 (23 U.S. C. 101) to carry out a Congressional mandate to reduce the mounting number of deaths, injuries, and economic losses resulting from motor vehicle crashes on the Nation's highways. In support of this mission, NHTSA anticipates the occasional need to conduct focus group sessions in order to develop and refine effective interventions and countermeasures. NHTSA will use the findings from focus group sessions to help focus current programs, interventions and countermeasures in order to achieve the greatest benefit in decreasing crashes and resulting injuries and fatalities, and provide informational support to States, localities, and law enforcement agencies that will aid them in their efforts to reduce traffic crashes.

*Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information)*—Each year NHTSA anticipates conducting 140 focus groups, or 420 over the three year period under a renewed clearance. Likely respondents are licensed drivers 18 years of age and older who have not participated in a previous focus group session. In some cases, stakeholders such as law enforcement and health officials may participate in the focus groups. Each respondent would participate in one focus group.

*Estimate of the Total Annual Reporting and Record Keeping Burden Resulting from the Collection of Information*—NHTSA estimates that the number of focus group participants will average 10 per group, and that average duration per focus group will be 80 minutes. Participants will be recruited by intercept or telephone using a brief screening questionnaire estimated to take no more than another 10 minutes. Therefore, over a three year period, NHTSA estimates that the total burden will be 6300 hours (420 focus groups × 10 participants × 90 minutes). Total annual burden will be 2100 hours (140 focus groups × 10 participants × 90 minutes).

The respondents would not incur any reporting cost from the information collection. The respondents also would not incur any record keeping burden or record keeping cost from the information collection.

**Authority:** 44 U.S.C. Section 3506(c)(2)(A).

Issued on: July 31, 2013.

**Jeff Michael,**

*Associate Administrator, Research and Program Development.*

[FR Doc. 2013–18870 Filed 8–2–13; 8:45 am]

BILLING CODE 4910–59–P

## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

### Unblocking of Specially Designated Nationals and Blocked Persons Pursuant to the Foreign Narcotics Kingpin Designation Act

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Notice.

**SUMMARY:** The Department of the Treasury's Office of Foreign Assets Control (''OFAC'') is publishing the names of five individuals and seven entities whose property and interests in property have been unblocked pursuant to the Foreign Narcotics Kingpin Designation Act (''Kingpin Act'') (21 U.S.C. 1901–1908, 8 U.S.C. 1182). In addition, OFAC is publishing an amendment to the identifying information of one individual and ten entities previously designated, or identified as blocked property, pursuant to the Kingpin Act.

**DATES:** The unblocking and removal from the list of Specially Designated Nationals and Blocked Persons (''SDN List'') of the five individuals and seven entities identified in this notice whose property and interests in property were blocked pursuant to the Kingpin Act, is effective on July 30, 2013.

**FOR FURTHER INFORMATION CONTACT:** Assistant Director, Sanctions

Compliance & Evaluation, Department of the Treasury, Office of Foreign Assets Control, Washington, DC 20220, Tel: (202) 622–2420.

**SUPPLEMENTARY INFORMATION:**

**Electronic and Facsimile Availability**

This document and additional information concerning OFAC are available from OFAC's Web site at *www.treasury.gov/ofac* or via facsimile through a 24-hour fax-on demand service at (202) 622–0077.

**Background**

On December 3, 1999, the Kingpin Act was signed into law by the President of the United States. The Kingpin Act provides a statutory framework for the President to impose sanctions against significant foreign narcotics traffickers and their organizations on a worldwide basis, with the objective of denying their businesses and agents access to the U.S. financial system and to the benefits of trade and transactions involving U.S. persons and entities.

The Kingpin Act blocks all property and interests in property, subject to U.S. jurisdiction, owned or controlled by significant foreign narcotics traffickers as identified by the President. In addition, the Secretary of the Treasury consults with the Attorney General, the Director of the Central Intelligence Agency, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, the Secretary of State, and the Secretary of Homeland Security when designating and blocking the property or interests in property, subject to U.S. jurisdiction, of persons or entities found to be: (1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act; (2) owned, controlled, or directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; and/or (3) playing a significant role in international narcotics trafficking.

On July 30, 2013, the Director of OFAC removed from the SDN List the five individuals and seven entities listed below, whose property and interests in property were blocked pursuant to the Kingpin Act:

**Individuals**

1. ARANIBAR CASTELLANOS, Percy Dangello, c/o LASA PERU S.A.C., Lima, Peru; c/o EMPRESA DE TRANSPORTES CHULUCANAS 2000 S.A., Lima, Peru; Jr. Augusto Gonzales Olaechea 1311, URB Elio, Lima, Peru; DOB 27 May 1971; LE Number 06778742 (Peru) (individual) [SDNTK].
2. ARRIOLA LUNA, Oscar Ignacio (a.k.a. ARREOLA LUNA, Oscar Ignacio), Mexico; c/o CORRALES SAN IGNACIO S.P.R. DE R.L. DE C.V., Saucillo, Chihuahua, Mexico; DOB 06 Apr 1994; POB Chihuahua, Chihuahua, Mexico; nationality Mexico; citizen Mexico; C.U.R.P. AILO940406HCHRNS06 (Mexico); alt. C.U.R.P. AELO940406HCHRNS04 (Mexico) (individual) [SDNTK].
3. CUESTA LEON, Carlos Pompeyo, c/o COLCHONES SUNMOONS LTDA, Bogota, Colombia; DOB 29 Nov 1965; POB Ubala, Cundinamarca, Colombia; nationality Colombia; citizen Colombia; Cedula No. 80375525 (Colombia) (individual) [SDNTK].
4. LONDONO RAMIREZ, Juan Pablo Antonio, c/o INTERNETSTATIONS E.U., Medellin, Colombia; c/o MONEDEUX EUROPA S.L., Madrid, Spain; c/o MONEDEUX FINANCIAL SERVICES COLOMBIA LTDA., Bogota, Colombia; c/o MONEDEUX LATIN AMERICA, S. DE R.L. DE C.V., Mexico City, Distrito Federal, Mexico; c/o MONEDEUX FINANCIAL SERVICES NORTH AMERICA, INC., Miami, FL; c/o MONEDEUX INTERNATIONAL SERVICES INC., Panama City, Panama; Carrera 78 No. 34–40, Medellin, Colombia; DOB 15 Feb 1965; POB Manizales, Colombia; Cedula No. 10267976 (Colombia); Passport CC10267976 (Colombia); alt. Passport AJ847440 (Colombia); alt. Passport AI314893 (Colombia); R.F.C. LORJ650215DH1 (Mexico); N.I.E. X–09552581–Z (Spain) (individual) [SDNTK].
5. SANCHEZ ACEVES, Raul, Flores Magon 8013, Zona Centro, Tijuana, Baja California, Mexico; c/o STRONG LINK DE MEXICO, S.A. DE C.V., Tijuana, Baja California, Mexico; DOB 21 Apr 1949; POB Distrito Federal, Mexico; nationality Mexico; citizen Mexico; R.F.C. SAAR–490421–MI9 (Mexico); C.U.R.P. SAAR490421HDFNCL09 (Mexico) (individual) [SDNTK].

**Entities**

1. COLCHONES SUNMOONS LTDA, Carrera 50 No. 37–45 Sur, Bogota, Colombia; NIT # 830073142–1 (Colombia) [SDNTK].
2. INTERNETSTATIONS E.U., Carrera 43A No. 15 Sur-15 Ofc. 802, Medellin, Colombia; NIT # 900071164–8 (Colombia) [SDNTK].
3. MONEDEUX EUROPA S.L., Calle Pinar, 5, Madrid 28006, Spain; C.I.F. B85375434 (Spain) [SDNTK].
4. MONEDEUX FINANCIAL SERVICES COLOMBIA LTDA., Calle 100 No. 8A–55 P 10, Bogota, Colombia; NIT # 900112718–5 (Colombia) [SDNTK].
5. MONEDEUX FINANCIAL SERVICES NORTH AMERICA, INC., Miami, FL; US FEIN 205487820; Business Registration Document # P05000069290 [SDNTK].
6. MONEDEUX INTERNATIONAL SERVICES INC., Panama City, Panama; RUC # 895887–1–513925 (Panama) [SDNTK].
7. MONEDEUX LATIN AMERICA, S. DE R.L. DE C.V. (f.k.a. IKIOSKOS DE MEXICO, S. DE R.L. DE C.V.), Avenida Santa Fe No. 495, Piso 4, Colonia Cruz Manca, Delegacion Cuajimalpa de Morelos, Mexico City, Distrito Federal C.P. 05349, Mexico; R.F.C. MLA010125E38 (Mexico); alt. R.F.C. IME010125C31 (Mexico) [SDNTK].

In addition, OFAC has amended the identifying information for the following individual and ten entities previously designated, or identified as blocked property, pursuant to the Kingpin Act:

1. CIFUENTES VILLA, Jorge Milton (a.k.a. LOPEZ SALAZAR, Elkin de Jesus), c/o BIO FORESTAL S.A., Medellin, Colombia; c/o C.I. DISTRIBUIDORA DE SERVICIOS COMBUSTIBLES Y MINERIA S.A., Bogota, Colombia; c/o C.I. METALURGIA EXTRACTIVA DE COLOMBIA S.A.S., Bogota, Colombia; c/o C.I. OKCOFFEE COLOMBIA S.A., Bogota, Colombia; c/o C.I. OKCOFFEE INTERNATIONAL S.A., Bogota, Colombia; c/o CUBICAFE S.A., Bogota, Colombia; c/o CUBI CAFE CLICK CUBE MEXICO, S.A. DE C.V., Mexico City, Distrito Federal, Mexico; c/o DESARROLLO MINERO RESPONSABLE C.I. S.A.S., Bogota, Colombia; c/o DOLPHIN DIVE SCHOOL S.A., Cartagena, Colombia; c/o GANADERIA LA SORGUITA S.A., Medellin, Colombia; c/o FUNDACION OKCOFFEE COLOMBIA, Bogota, Colombia; c/o FUNDACION PARA EL BIENESTAR Y EL PORVENIR, Medellin, Colombia; c/o FUNDACION SALVA LA SELVA, Bogota, Colombia; c/o GANADERIA LA SORGUITA S.A., Medellin, Colombia; c/o GESTORES DEL ECUADOR GESTORUM S.A.,

Quito, Ecuador; c/o HOTELES Y BIENES S.A., Bogota, Colombia; c/o INVERPUNTO DEL VALLE S.A., Cali, Colombia; c/o INVERSIONES CIFUENTES Y CIA. S. EN C., Medellin, Colombia; c/o LE CLAUDE, S.A. DE C.V., Mexico City, Distrito Federal, Mexico; c/o OPERADORA NUEVA GRANADA, S.A. DE C.V., Mexico City, Distrito Federal, Mexico; c/o LINEA AEREA PUEBLOS AMAZONICOS S.A.S., Bogota, Colombia; c/o PARQUES TEMATICOS S.A., Medellin, Colombia; c/o PROMO RAIZ S.A., Medellin, Colombia; c/o RED MUNDIAL INMOBILIARIA, S.A. DE C.V., Huixquilucan, Estado de Mexico, Mexico; c/o UNION DE CONSTRUCTORES CONUSA S.A., Bogota, Colombia; Avenida Carrera 9 No. 113–52 Of. 401, Bogota, Colombia; Calle 6 No. 33–29 Apto. 801, Medellin, Colombia; Calle 74 No. 10–33 Apto. 806, Bogota, Colombia; Calle Blas Pascal No. 106, Colonia Los Morales, Delegacion Miguel Hidalgo, Mexico City, Distrito Federal C.P. 11510, Mexico; Calle Eje J No. 999 Pasaje Santa Fe, Departamento No. 301, Colonia Ciudad Santa Fe, Delegacion Alvaro Obregon, Mexico City, Distrito Federal C.P. 01210, Mexico; Camino del Remanso, No. 80 A, Planta Baja, Colonia Lomas Country Club, Huixquilucan, Estado de Mexico C.P. 52779, Mexico; Camino del Remanso No. 80 Interior 2, Colonia Lomas Country Club, Huixquilucan, Estado de Mexico C.P. 52779, Mexico; Carrera 8 No. 10–56 Of. 201, Cali, Colombia; Carrera 68D No. 25–10, Lote 41 E/S Terminal, Bogota, Colombia; Carrera 68D No. 25B–86 Of. 504, Bogota, Colombia; Miguel Schultz No. 127, Colonia San Rafael, Delegacion Cuauhtemoc, Mexico City, Distrito Federal C.P. 06470, Mexico; DOB 13 May 1965; alt. DOB 13 Apr 1968; POB Medellin, Colombia; alt. POB Marinilla, Antioquia, Colombia; C.U.R.P. CIVJ650513HNEFLR06 (Mexico); Cedula No. 7548733 (Colombia); alt. Cedula No. 70163752 (Colombia); alt. Cedula No. 172489729–1 (Ecuador); Matricula Mercantil No 181301–1 Cali (Colombia); Matricula Mercantil No 405885 Bogota (Colombia); Passport AL720622 (Colombia); R.F.C. CIVJ650513LJA (Mexico) (individual) [SDNTK]

2. C.I. OKCOFFEE COLOMBIA S.A., Autopista Bogota-Medellin Km. 7, Parque Industrial Celta Lote 41 Bodega 8, Funza, Cundinamarca, Colombia; Avenida Carrera 9 No. 113–52 Ofc. 402, Bogota, Colombia; NIT # 830124959–1 (Colombia) [SDNTK]
3. C.I. OKCOFFEE INTERNATIONAL S.A., Autopista Bogota-Medellin Km. 7, Parque Industrial Celta Lote 41 Bodega 8, Funza, Cundinamarca, Colombia; Avenida Carrera 9 No. 113–52 Ofc. 401, Bogota, Colombia; NIT # 900060391–6 (Colombia) [SDNTK]
4. CUBICAFE S.A., (a.k.a. OK COFFEE), Avenida Carrera 9 No. 113–52 Ofc. 401, Bogota, Colombia; Calle 65 Bis No. 89A–73, Bogota, Colombia; Autopista Bogota- Medellin Km. 7, Parque Industrial Celta Lote 41 Bodega 8, Funza, Cundinamarca, Colombia; NIT # 830136426–1 (Colombia) [SDNTK]
5. DESARROLLO MINERO RESPONSABLE C.I. S.A.S. (a.k.a. DMR C.I. S.A.S.); Avenida Carrera 9 No. 113–52 Of. 401; NIT # 900386627–9 (Colombia) [SDNTK]
6. DISTRIBUIDORA DE SERVICIOS COMBUSTIBLES Y MINERIA S.A. (a.k.a. C.I. DISERCOM S.A.; a.k.a. DISERCOM S.A.; f.k.a. DISTRIBUIDORA DE SERVICIOS Y COMBUSTIBLES S.A.), Autopista Bogota-Medellin Km. 7, Parque Industrial Celta Lote 41 Bodega 8, Funza, Cundinamarca, Colombia; Avenida Carrera 9 No. 113–52 Ofc. 401, Bogota, Colombia; Carrera 13 No. 29–21, Manzana 1 Oficina 401, Bogota, Colombia; Carrera 13 No. 29–21, Manzana 1 Oficina 401, Bogota, Colombia; NIT # 830046009–5 (Colombia) [SDNTK]
7. FUNDACION OKCOFFEE COLOMBIA, Avenida Carrera 9 No. 113–52 Ofc. 401, Bogota, Colombia; NIT # 900311507–1 (Colombia) [SDNTK]
8. FUNDACION SALVA LA SELVA, Avenida Carrera 9 No. 113–52 Ofc. 401, Bogota, Colombia; NIT # 900390392–9 (Colombia) [SDNTK]
9. HOTELES Y BIENES S.A., (a.k.a. HOTEL NUEVA GRANADA), Avenida Jimenez No. 4–77, Bogota, Colombia; Avenida Calle 13 No. 4-77, Bogota, Colombia; Avenida Carrera 9 No. 113–52 Ofc. 401, Bogota, Colombia; NIT # 830092519–5 (Colombia) [SDNTK]
10. LINEA AEREA PUEBLOS AMAZONICOS S.A.S., (a.k.a. LAPA S.A.S.), Mitu, Vaupes, Colombia; Villavicencio, Colombia; Avenida Carrera 9 No. 113–52 Ofc. 401, Bogota, Colombia; NIT # 900377739–7 (Colombia) [SDNTK]
11. UNION DE CONSTRUCTORES CONUSA S.A.S. (f.k.a. UNION DE CONSTRUCTORES CONUSA S.A.), Apartamentos Life, Medellin, Colombia; Avenida Carrera 9 No. 113–52 Ofc. 401; Boca Salinas, Santa Marta, Colombia; Calle 74 No. 10–33, Mirador del Moderno, Bogota, Colombia; Carrera 68D No. 258–86 Of. 504 Torre Central, Bogota, Colombia; Haciendas de Potrerito, Cali, Colombia; Isla Pavito, Cartagena, Colombia; Transversal 1B Este No. 7A–20 Sur, Buenos Aires Etapa II, Bogota, Colombia; NIT # 800226431–4 (Colombia) [SDNTK]

The listing for this individual and ten entities now appear as follows:

1. CIFUENTES VILLA, Jorge Milton (a.k.a. LOPEZ SALAZAR, Elkin de Jesus; a.k.a. OSUNA VILLARREAL, Sergio), Calle 6 No. 33–29 Apto. 801, Medellin, Colombia; Calle 74 No. 10–33 Apto. 806, Bogota, Colombia; Calle Blas Pascal No. 106, Colonia Los Morales, Delegacion Miguel Hidalgo, Mexico City, Distrito Federal C.P. 11510, Mexico; Calle Eje J No. 999 Pasaje Santa Fe, Departamento No. 301, Colonia Ciudad Santa Fe, Delegacion Alvaro Obregon, Mexico City, Distrito Federal C.P. 01210, Mexico; Camino del Remanso, No. 80 A, Planta Baja, Colonia Lomas Country Club, Huixquilucan, Estado de Mexico C.P. 52779, Mexico; Camino del Remanso No. 80 Interior 2, Colonia Lomas Country Club, Huixquilucan, Estado de Mexico C.P. 52779, Mexico; Carrera 8 No. 10–56 Of. 201, Cali, Colombia; Carrera 68D No. 25–10, Lote 41 E/S Terminal, Bogota, Colombia; Carrera 68D No. 25B–86 Of. 504, Bogota, Colombia; Miguel Schultz No. 127, Colonia San Rafael, Delegacion Cuauhtemoc, Mexico City, Distrito Federal C.P. 06470, Mexico; Paseo de las Gacelas No. 550, Fraccionamiento Ciudad Bugambilias, Guadalajara, Jalisco, Mexico; DOB 13 May 1965; alt. DOB 13 Apr 1968; alt. DOB 07 Jul 1964; POB Medellin, Colombia; alt. POB Marinilla, Antioquia, Colombia; alt. POB Ciudad Victoria, Tamaulipas, Mexico; Cedula No. 7548733 (Colombia); alt. Cedula No. 70163752 (Colombia); alt. Cedula No. 172489729–1 (Ecuador); Passport AL720622 (Colombia); R.F.C. CIVJ650513LJA (Mexico); alt. R.F.C. OUSV–640707 (Mexico); C.U.R.P. CIVJ650513HNEFLR06 (Mexico); alt. C.U.R.P. OUVS640707HTSSLR07 (Mexico); Matricula Mercantil No 181301–1 Cali (Colombia); alt. Matricula Mercantil No 405885 Bogota

(Colombia) (individual) [SDNTK] (Linked To: BIO FORESTAL S.A.S.; Linked To: CUBI CAFE CLICK CUBE MEXICO, S.A. DE C.V.; Linked To: DOLPHIN DIVE SCHOOL S.A.; Linked To: GANADERIA LA SORGUITA S.A.S.; Linked To: GESTORES DEL ECUADOR GESTORUM S.A.; Linked To: INVERPUNTO DEL VALLE S.A.; Linked To: INVERSIONES CIFUENTES Y CIA. S. EN C.; Linked To: LE CLAUDE, S.A. DE C.V.; Linked To: OPERADORA NUEVA GRANADA, S.A. DE C.V.; Linked To: PARQUES TEMATICOS S.A.S.; Linked To: PROMO RAIZ S.A.S.; Linked To: RED MUNDIAL INMOBILIARIA, S.A. DE C.V.; Linked To: FUNDACION PARA EL BIENESTAR Y EL PORVENIR; Linked To: C.I. METALURGIA EXTRACTIVA DE COLOMBIA S.A.S.; Linked To: GRUPO MUNDO MARINO, S.A.; Linked To: C.I. DISERCOM S.A.S.; Linked To: C.I. OKCOFFEE COLOMBIA S.A.S.; Linked To: C.I. OKCOFFEE INTERNATIONAL S.A.S.; Linked To: FUNDACION OKCOFFEE COLOMBIA; Linked To: CUBICAFE S.A.S.; Linked To: HOTELES Y BIENES S.A.; Linked To: FUNDACION SALVA LA SELVA; Linked To: LINEA AEREA PUEBLOS AMAZONICOS S.A.S.; Linked To: DESARROLLO MINERO RESPONSABLE C.I. S.A.S.; Linked To: R D I S.A.).

2. C.I. OKCOFFEE COLOMBIA S.A.S. (f.k.a. C.I. OKCOFFEE COLOMBIA S.A.), Autopista Bogota-Medellin Km. 7, Parque Industrial Celta Lote 41 Bodega 8, Funza, Cundinamarca, Colombia; NIT # 830124959–1 (Colombia) [SDNTK].
3. C.I. OKCOFFEE INTERNATIONAL S.A.S. (f.k.a. C.I. OKCOFFEE INTERNATIONAL S.A.), Autopista Bogota-Medellin Km. 7, Parque Industrial Celta Lote 41 Bodega 8, Funza, Cundinamarca, Colombia; NIT # 900060391–6 (Colombia) [SDNTK].
4. CUBICAFE S.A.S. (f.k.a. CUBICAFE S.A.; a.k.a. OK COFFEE), Autopista Bogota-Medellin Km. 7, Parque Industrial Celta Lote 41 Bodega 8, Funza, Cundinamarca, Colombia; Calle 65 Bis No. 89A–73, Bogota, Colombia; NIT # 830136426–1 (Colombia) [SDNTK].
5. DESARROLLO MINERO RESPONSABLE C.I. S.A.S. (a.k.a. DMR C.I. S.A.S.); NIT # 900386627–9 (Colombia) [SDNTK].
6. C.I. DISERCOM S.A.S. (f.k.a. C.I. DISERCOM S.A.; f.k.a. C.I. DISTRIBUIDORA DE SERVICIOS COMBUSTIBLES Y MINERIA S.A.; f.k.a. DISERCOM S.A.; f.k.a. DISTRIBUIDORA DE SERVICIOS Y COMBUSTIBLES S.A.), Autopista Bogota-Medellin Km. 7, Parque Industrial Celta Lote 41 Bodega 8, Funza, Cundinamarca, Colombia; Carrera 13 No. 29–21, Manzana 1 Oficina 401, Bogota, Colombia; NIT # 830046009–5 (Colombia) [SDNTK].
7. FUNDACION OKCOFFEE COLOMBIA; NIT # 900311507–1 (Colombia) [SDNTK].
8. FUNDACION SALVA LA SELVA; NIT # 900390392–9 (Colombia) [SDNTK].
9. HOTELES Y BIENES S.A. (a.k.a. HOTEL NUEVA GRANADA), Avenida Calle 13 No. 4–77, Bogota, Colombia; Avenida Jimenez No. 4–77, Bogota, Colombia; NIT # 830092519–5 (Colombia) [SDNTK].
10. LINEA AEREA PUEBLOS AMAZONICOS S.A.S. (a.k.a. LAPA S.A.S.), Mitu, Vaupes, Colombia; Villavicencio, Colombia; NIT # 900377739–7 (Colombia) [SDNTK].
11. UNION DE CONSTRUCTORES CONUSA S.A.S. (f.k.a. UNION DE CONSTRUCTORES CONUSA S.A.), Apartamentos Life, Medellin, Colombia; Boca Salinas, Santa Marta, Colombia; Calle 74 No. 10–33, Mirador del Moderno, Bogota, Colombia; Carrera 68D No. 258–86 Of. 504 Torre Central, Bogota, Colombia; Haciendas de Potrerito, Cali, Colombia; Isla Pavito, Cartagena, Colombia; Transversal 1B Este No. 7A–20 Sur, Buenos Aires Etapa II, Bogota, Colombia; NIT # 800226431–4 (Colombia) [SDNTK].

Dated: July 30, 2013.

**Adam J. Szubin,**

*Director, Office of Foreign Assets Control.*

[FR Doc. 2013–18796 Filed 8–2–13; 8:45 am]

**BILLING CODE 4810–AL–P**

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## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

### Unblocking of Specially Designated Nationals and Blocked Persons Pursuant to Executive Order 12978

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Notice.

**SUMMARY:** The Department of the Treasury's Office of Foreign Assets Control (''OFAC'') is publishing the names of twelve individuals and eight entities whose property and interests in property have been unblocked pursuant to Executive Order 12978 of October 21, 1995, ''Blocking Assets and Prohibiting Transactions With Significant Narcotics Traffickers''. In addition, OFAC is publishing an amendment to the identifying information of three individuals previously designated pursuant to Executive Order 12978.

**DATES:** The unblocking and removal from the list of Specially Designated Nationals and Blocked Persons (''SDN List'') of the twelve individuals and eight entities identified in this notice whose property and interests in property were blocked pursuant to Executive Order 12978 of October 21, 1995, is effective on July 30, 2013.

**FOR FURTHER INFORMATION CONTACT:** Assistant Director, Sanctions Compliance & Evaluation, Department of the Treasury, Office of Foreign Assets Control, Washington, DC 20220, Tel: (202) 622–2490.

**SUPPLEMENTARY INFORMATION:**

### Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treasury.gov/ofac*) or via facsimile through a 24-hour fax-on demand service at (202) 622–0077.

### Background

On October 21, 1995, the President, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA''), issued Executive Order 12978 (60 FR 54579, October 24, 1995) (the ''Order''). In the Order, the President declared a national emergency to deal with the threat posed by significant foreign narcotics traffickers centered in Colombia and the harm that they cause in the United States and abroad.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The foreign persons listed in an Annex to the Order; (2) any foreign person determined by the Secretary of Treasury, in consultation with the Attorney General and the Secretary of State: (a) To play a significant role in international narcotics trafficking centered in Colombia; or (b) to materially assist in, or provide financial or technological support for or goods or services in support of, the narcotics trafficking activities of persons

designated in or pursuant to the Order; and (3) persons determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to be owned or controlled by, or to act for or on behalf of, persons designated pursuant to the Order.

On July 30, 2013, the Director of OFAC removed from the SDN List the twelve individuals and eight entities listed below, whose property and interests in property were blocked pursuant to the Order:

**Individuals**

1. FRANCO MUNOZ, Francisco, Calle 10 Bis No. 67A–51, Cali, Colombia; c/o GRAN MUELLE S.A., Buenaventura, Colombia; POB Facatativa, Cundinamarca, Colombia; Cedula No. 03014999 (Colombia); Passport 03014999 (Colombia) (individual) [SDNT].

2. GARCIA VARELA, Luis Fernando, c/o TAURA S.A., Cali, Colombia; Cedula No. 16282923 (Colombia) (individual) [SDNT].

3. GRAJALES LONDONO, Juan Raul, c/o HEBRON S.A., Tulua, Valle, Colombia; c/o INTERNATIONAL FREEZE DRIED S.A., Bogota, Colombia; c/o JOSAFAT S.A., Tulua, Valle, Colombia; c/o SALIM S.A., La Union, Valle, Colombia; c/o CALI@TELE.COM LTDA., Cali, Colombia; c/o CITICAR LTDA., La Union, Valle, Colombia; c/o COMUNICACIONES ABIERTAS CAMARY LTDA., Cali, Colombia; c/o CONFECCIONES LINA MARIA LTDA., La Union, Valle, Colombia; c/o DOXA S.A., La Union, Valle, Colombia; DOB 10 Oct 1986; POB Bogota, Colombia; Cedula No. 11167762 (Colombia) (individual) [SDNT].

4. LOPEZ RODRIGUEZ, Walter, c/o CARMILE INVERSIONES LOPEZ Y CIA. S.C.A., Cali, Colombia; c/o CONSTRUCTORA SANTA TERESITA S.A., Cali, Colombia; c/o INVERSIONES MEDICAS Y QUIRUGICAS ESPECIALIZADAS LTDA., Cali, Colombia; c/o PRODUCTOS ALIMENTICIOS GLACIARES LTDA., Cali, Colombia; c/o UNIVISA S.A., Cali, Colombia; DOB 12 Jul 1954; POB Buga, Valle, Colombia; Cedula No. 19253056 (Colombia); Passport PO66566 (Colombia) (individual) [SDNT].

5. MORALES CASTRILLON, Victor Hugo, c/o TAURA S.A., Cali, Colombia; Cedula No. 16620349 (Colombia) (individual) [SDNT].

6. NARVAEZ PUENTES, James Orlando, c/o AGROGANADERA LA ISABELA S.A., Cali, Colombia; c/o CENTRO COMERCIAL GUSS S.A., Cali, Colombia; c/o CONSTRUCCIONES LA RESERVA S.A., Cali, Colombia; c/o CONSTRUCTORA JUANAMBU S.A., Cali, Colombia; c/o CONSTRUCTORA LOMA LINDA S.A., Cali, Colombia; c/o CONSTRUCTORA UMBRIA S.A., Cali, Colombia; c/o VENECIA INMOBILIARIA QUILICHAO S.A. & CIA S.C.A., Cali, Colombia; Carrera 66 No. 10–36, Cali, Colombia; Carrera 121 No. 13–76, Casa 7, Cali, Colombia; Calle 1 No. 56–109, Casa 33 Seminar, Cali, Colombia; DOB 29 Nov 1959; nationality Colombia; citizen Colombia; Cedula No. 16634261 (Colombia); Passport AK279300 (Colombia); alt. Passport AF366653 (Colombia) (individual) [SDNT].

7. PABON ALVARADO, Gustavo Alberto, c/o INVERSIONES MPS S.A., Bogota, Colombia; c/o PROYECTOS Y SOLUCIONES S.A., Bogota, Colombia; c/o PROYECTOS Y SOLUCIONES INMOBILIARIA LTDA., Bogota, Colombia; c/o GERENCIA DE PROYECTOS Y SOLUCIONES LTDA., Bogota, Colombia; c/o ACUICOLA SANTA CATALINA S.A., Bogota, Colombia; c/o HOTEL LA CASCADA S.A., Girardot, Colombia; c/o FLORIDA SOCCER CLUB S.A., Medellin, Colombia; Avenida 13 No. 100–12 Ofc. 302, Bogota, Colombia; c/o MISION INMOBILIARIA LIMITADA, Bogota, Colombia; DOB 06 May 1955; POB Bogota, Colombia; Cedula No. 79146243 (Colombia) (individual) [SDNT].

8. PERDOMO ZUNIGA, Hugo Ivan, c/o CONSTRUVIDA S.A., Cali, Colombia; DOB 16 Jun 1960; Cedula No. 16669843 (Colombia) (individual) [SDNT].

9. QUIGUA ARIAS, Omar, c/o INCOES LTDA., Cali, Colombia; c/o IMCOMER LTDA., Cali, Colombia; DOB 26 Mar 1949; Cedula No. 6208489 (Colombia) (individual) [SDNT].

10. RAMIREZ BUITRAGO, Luis Eduardo, c/o INCOES LTDA., Cali, Colombia (individual) [SDNT].

11. RAMIREZ SANCHEZ, Alben, c/o INCOES LTDA., Cali, Colombia (individual) [SDNT].

12. SOTO GUTIERREZ, Hernan, c/o INVERSIONES ARIO LTDA, Cali, Colombia; Carrera 24E No. 4–116 Oeste, Cali, Colombia; Cedula No. 6079597 (Colombia) (individual) [SDNT].

**Entities**

1. CARMILE INVERSIONES LOPEZ Y CIA. S.C.A. (f.k.a. COMERCIALIZADORA CARMILE Y CIA. S.C.A.; a.k.a. ESTACION DE SERVICIO EL OASIS DE PASOANCHO; a.k.a. FOOD MART OASIS), Calle 13 No. 31–42, Cali, Colombia; NIT # 890329543–0 (Colombia) [SDNT].

2. CONSTRUCTORA SANTA TERESITA S.A., Avenida 6 Norte No. 17–92 Of. 411, Cali, Colombia; NIT # 805028212–7 (Colombia) [SDNT].

3. INTERVENTORIA, CONSULTORIA Y ESTUDIOS LIMITADA INGENIEROS ARQUITECTOS (a.k.a. INCOES), Avenida 6N No. 13N–50 of. 1209, Cali, Colombia; NIT # 800144790–0 (Colombia) [SDNT].

4. INVERSIONES MEDICAS Y QUIRUGICAS ESPECIALIZADAS LTDA., Calle 13 No. 31–42, Cali, Colombia; NIT # 800171266–7 (Colombia) [SDNT].

5. MISION INMOBILIARIA LIMITADA, Calle 100 No. 60–04, Oficina 506, Bogota, Colombia; NIT # 900146213–4 (Colombia) [SDNT].

6. PRODUCTOS ALIMENTICIOS GLACIARES LTDA. (f.k.a. FRONTERA REPRESENTACIONES LTDA.), Carrera 84 No. 15–26, Cali, Colombia; NIT # 805027303–4 (Colombia) [SDNT].

7. PROYECTOS J.A.M. LTDA. Y CIA. S. EN C., Calle 74 No. 53–23 of. 401, Barranquilla, Colombia; Calle 74 No. 53–23 L–503, Barranquilla, Colombia; Carrera 53 No. 74–16 of. 401, Barranquilla, Colombia; Carrera 53 No. 74–16, Barranquilla, Colombia; NIT # 800243483–9 (Colombia) [SDNT].

8. PROYECTOS J.A.M. LTDA., Carrera 53 No. 74–16, Barranquilla, Colombia; Carrera 54 No. 72–147, Barranquilla, Colombia; Calle 77 No. 65–37 L–6, Barranquilla, Colombia; NIT # 800234529–0 (Colombia) [SDNT].

In addition, OFAC amended the identifying information for the following three individuals previously designated pursuant to Executive Order 12978:

1. IBANEZ LOPEZ, Raul Alberto, c/o INCOES LTDA., Cali, Colombia; c/o AGROPECUARIA LA ROBLEDA S.A., Cali, Colombia; c/o GANADERIAS DEL VALLE S.A., Cali, Colombia; c/o INMOBILIARIA U.M.V. S.A., Cali, Colombia; c/o DISTRIBUIDORA DE ELEMENTOS PARA LA CONSTRUCCION S.A., Cali, Colombia; DOB 11 Apr 1960; Cedula No. 16640123 (Colombia) (individual) [SDNT].

2. RIZO MORENO, Jorge Luis, c/o SERVICIOS INMOBILIARIOS LTDA., Cali, Colombia; c/o CONSTRUCTORA DIMISA LTDA., Cali, Colombia; c/o INDUSTRIA AVICOLA PALMASECA S.A., Cali, Colombia; c/o INVERSIONES EL PENON S.A., Cali, Colombia; c/o CONSTRUVIDA S.A., Cali, Colombia; Transversal 11, Diagonal 23–30 apt. 304A, Cali, Colombia; c/o SERVIAUTOS UNO A 1A LIMITADA, Cali, Colombia; c/o IMPORTADORA Y COMERCIALIZADORA LTDA., Cali, Colombia; c/o INTERVENTORIA, CONSULTORIA Y ESTUDIOS LIMITADA INGENIEROS ARQUITECTOS, Cali, Colombia; c/o

PROCESADORA DE POLLOS SUPERIOR S.A., Palmira, Colombia; DOB 17 May 1960; Cedula No. 16646582 (Colombia) (individual) [SDNT].

3. SAAVEDRA ARCE, Rodrigo Eugenio, CONSTRUCTORA SANTA TERESITA S.A., Cali, Colombia; c/o BOSQUE DE SANTA TERESITA LTDA., Cali, Colombia; c/o SAAVEDRA Y CIA. S. EN C., Cali, Colombia; DOB 30 Oct 1942; Cedula No. 16236683 (Colombia); Passport AF637666 (Colombia) (individual) [SDNT].

The listings for the three individuals now appear as follows:

1. IBANEZ LOPEZ, Raul Alberto; DOB 11 Apr 1960; Cedula No. 16640123 (Colombia) (individual) [SDNT] (Linked To: AGROPECUARIA LA ROBLEDA S.A.; Linked To: GANADERIAS DEL VALLE S.A.; Linked To: INMOBILIARIA U.M.V. S.A.; Linked To: DISTRIBUIDORA DE ELEMENTOS PARA LA CONSTRUCCION S.A.).

2. RIZO MORENO, Jorge Luis, Transversal 11, Diagonal 23–30 apt. 304A, Cali, Colombia; DOB 17 May 1960; Cedula No. 16646582 (Colombia) (individual) [SDNT] (Linked To: SERVICIOS INMOBILIARIOS LTDA.; Linked To: SERVIAUTOS UNO A 1A LIMITADA; Linked To: INVERSIONES EL PENON S.A.; Linked To: CONSTRUVIDA S.A.; Linked To: IMPORTADORA Y COMERCIALIZADORA LTDA.; Linked To: CONSTRUCTORA DIMISA LTDA.; Linked To: PROCESADORA DE POLLOS SUPERIOR S.A.; Linked To: CRIADERO DE POLLOS EL ROSAL S.A.).

3. SAAVEDRA ARCE, Rodrigo Eugenio; DOB 30 Oct 1942; Cedula No. 16236683 (Colombia); Passport AF637666 (Colombia) (individual) [SDNT] (Linked To: BOSQUE DE SANTA TERESITA LTDA.; Linked To: SAAVEDRA Y CIA. S. EN C.).

Dated: July 30, 2013.

**Adam J. Szubin,**

*Director, Office of Foreign Assets Control.*

[FR Doc. 2013–18803 Filed 8–2–13; 8:45 am]

BILLING CODE 4810–AL–P

# FEDERAL REGISTER

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Part II

## Department of Commerce

National Oceanic and Atmospheric Administration

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Seismic Survey in the Chukchi Sea, Alaska; Notice

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

**RIN 0648–XC562**

## Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Seismic Survey in the Chukchi Sea, Alaska

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

**ACTION:** Notice; issuance of an incidental take authorization.

**SUMMARY:** In accordance with the Marine Mammal Protection Act (MMPA) regulations, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to Shell Gulf of Mexico Inc. (Shell) to take, by harassment, small numbers of 13 species of marine mammals incidental to a marine survey program in the Chukchi Sea, Alaska, during the 2013 Arctic open-water season. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to Shell to take, by Level B harassment, 13 species of marine mammals during the specified activity.

**DATES:** Effective July 1, 2013, through October 31, 2013.

**ADDRESSES:** Inquiry for information on the incidental take authorization should be addressed to P. Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. A copy of the application containing a list of the references used in this document, NMFS' Environmental Assessment (EA), Finding of No Significant Impact (FONSI), and the IHA may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.*

Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

**FOR FURTHER INFORMATION CONTACT:** Shane Guan, Office of Protected Resources, NMFS, (301) 427–8401 or Brad Smith, NMFS, Alaska Region, (907) 271–3023.

**SUPPLEMENTARY INFORMATION:**

### Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the U.S. can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [''Level A harassment'']; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [''Level B harassment'']

### Summary of Request

NMFS received an application on January 2, 2013, from Shell for the taking, by harassment, of marine mammals incidental to a marine surveys program in the Beaufort and Chukchi seas, Alaska, during the open-water season of 2013. Subsequently, Shell revised its proposed marine surveys program and limited its activities to the Chukchi Sea, and resubmitted an IHA application on March 25, 2013. Based on NMFS comments, Shell further revised its IHA application and submitted its final IHA application on April 2, 2013.

### Description of the Specified Activity

Shell plans to complete a marine surveys program and conduct its equipment recovery and maintenance activity, during the 2013 open-water season in the Chukchi Sea. A total of three vessels would be utilized for the proposed open-water activities: the marine surveys would be conducted from a single vessel, a second vessel would be used for equipment recovery and maintenance activity at Burger A, and a third vessel may be used to provide logistical support to either and/or both operations. Overall, Shell's 2013 open-water marine surveys program includes the following three components:

- Chukchi Sea Offshore Ice Gouge Surveys;
- Chukchi Sea Offshore Site Clearance and Shallow Hazards Survey; and
- Equipment Recovery and Maintenance

Detailed locations of these activities are shown in Figures 1–1 through 1–3 of Shell's IHA application.

Ice and weather conditions will influence when and where the open-water marine surveys will be conducted. For initial planning purposes, Shell states that the offshore marine surveys and equipment recovery and maintenance would be conducted within the time frame of July through October 2013.

*Chukchi Sea Offshore Ice Gouge Surveys*

Ice gouge information is required for the design of potential pipelines and pipeline trenching and installation equipment. Ice gouges are created by ice keels that project from the bottom of ice, and gouge the seafloor sediment as the ice moves with the wind or currents. Ice gouge features can be mapped and surveyed, and by surveying the same locations from year to year, new gouges can be identified and the rate of ice gouging can be estimated. The resulting ice gouge information would assist Shell in predicting the probability, frequency, orientation, and depth of future ice gouges.

Shell plans to conduct ice gouge surveys along approximately 621 mi

(1,000 km) of tracklines in the Chukchi Sea in 2013, within the area denoted in Figure 1–1 of the IHA application. These surveys will: (a) Resurvey selected tracklines for ice gouge features to determine the rate or frequency of new ice gouges; and (b) map seafloor topography and characterize the upper 34 ft (10 m) of the seabed (seafloor and sub-seafloor) using acoustic methods. The ice gouge surveys will be conducted using the conventional survey method where the acoustic instrumentation will be towed behind the survey vessel. These acoustic instrumentation includes dual-frequency side scan sonar, single-beam bathymetric sonar, multi-beam bathymetric sonar, shallow sub-bottom profiler, and magnetometer.

Due to the low intensity and high frequency acoustic sources being used for the proposed ice gouge surveys, this activity is not expected to result in takes of marine mammals.

*Chukchi Sea Site Clearance and Shallow Hazards Surveys*

The proposed site clearance and shallow hazards surveys are to gather data on: (1) Bathymetry, (2) seabed topography and other seabed characteristics (e.g., ice gouges), (3) potential shallow geohazards (e.g., shallow faults and shallow gas zones), and (4) the presence of any possible archeological features (prehistoric or historic, e.g., middens, shipwrecks). Marine surveys for site clearance and shallow hazard surveys can be accomplished by one vessel with acoustic sources.

Shell plans to conduct site clearance and shallow hazards surveys along approximately 3,200 kilometers (km) of tracklines in the Chukchi Sea in 2013 (see Figure 1–2 of the IHA application). These surveys would characterize the upper 1,000 meters (m) (3,128 feet [ft]) of the seabed and sub seafloor topography and measure water depths of potential exploratory drilling locations using acoustic methods. The site clearance and shallow hazard surveys would be conducted using the conventional survey method where the acoustic instrumentation will be towed behind the survey vessel. The acoustic instrumentation used in site clearance and shallow hazards surveys is largely the same as those for the offshore ice gouge surveys, but also includes a 4 x 10 cubic inch ($in^3$) airgun array.

*Equipment Recovery and Maintenance*

Shell's proposed equipment recovery and maintenance activities would occur at the Burger A well site in the Chukchi Sea (see Figure 1–3 of the IHA application). The equipment recovery and maintenance activity would be accomplished by one vessel operating in dynamic positioning (DP) mode for an extended period over the drilling site. The vessel may be resupplied during the activity by vessel or aircraft.

Work would be conducted subsea within the mudline cellar (MLC; ~ 20 ft wide by 40 ft. deep excavation dug for the Burger A wellhead during 2012 drilling at this well site) with a suite of Remotely Operated Vehicles (ROV) and divers that would recover equipment left sub-mudline on the well head during the 2012 open water drilling season. The survey vessel would be dynamically positioned at the well site for up to ~28 days while subsurface equipment recovery and maintenance occurs, however Shell anticipates this work being accomplished in less than 28 days. During this planned work scope the state and integrity of the well would not be changed since no form of entry will be made into the well.

*Acoustic Equipment and Vessels Planned to be Used*

For the proposed site clearance and shallow hazards surveys, Shell plans to use the same 4 x 10 $in^3$ airgun array configuration that was used during site clearance and shallow hazards surveys in the Chukchi Sea in 2008 and 2009. Measurements during these two years occurred at three locations: Honeyguide (west of the Crackerjack prospect), Crackerjack, and Burger. The distances to various threshold radii from those measurements are shown in Table 1. The 160 dB (rms) re 1 μPa radius that was measured at the Burger location was the largest of the three sites.

TABLE 1—MEASURED DISTANCES IN (METERS) TO RECEIVED SOUND LEVELS FROM A 4 X $10^3$ AIRGUN ARRAY AT THREE LOCATIONS IN THE ALASKAN CHUKCHI SEA

| Location | Received Sound Level (dB re 1 μPa rms) | | | |
|---|---|---|---|---|
| | 190 | 180 | 160 | 120 |
| Honeyguide | 41 | 100 | 600 | 22,000 |
| Crackerjack | 50 | 160 | 1,400 | 24,000 |
| Burger | 39 | 150 | 1,800 | 31,000 |

Sound source characteristics that would be used during the site clearance and shallow hazard surveys and ice gouge surveys include single-beam bathymetric sonar, multi-beam bathymetric sonar, dual frequency side-scan sonar, shallow sub-bottom profiler, and an ultra-short baseline acoustic positioning system. Representative source characteristics of these acoustic instrumentation were measured during Statoil's 2011 marine survey program in the Chukchi Sea (Warner and McCrodan 2011), and are listed in Table 2.

TABLE 2—SOURCE CHARACTERISTICS AND DISTANCES TO 160 dB (RMS) RE 1 μPa SOUND LEVELS FROM ACOUSTIC INSTRUMENTATION MEASURED IN THE CHUKCHI SEA

| Instrument type | Model | Center Frequency (kHz) | Frequency Range (kHz) | Beam Width | Nominal Source Level (dB re 1 μPa rms) | In-beam 160 dB Distance (m) | Out-of-beam 160 dB Distance |
|---|---|---|---|---|---|---|---|
| Single-beam sonar | Simrad EA502 | 12 kHz | 8–20 kHz | <10° | 218.0 | 40 | 40 m. |
| Multi-beam bathymetric sonar. | Kongsberg EM2040 | 220 kHz | 200–240 | <2° | 187.4 | 0 | 0 m. |
| Side-scan sonar | GeoAcoustics 159D | 110 | 100–120 | <2° | 211.5 | 230 | NA. |
| Sub-bottom profiler | Kongsberg SBP300 | 3–7 | 3–7 | 15° | 195.9 | 30 | 3 m. |

TABLE 2—SOURCE CHARACTERISTICS AND DISTANCES TO 160 dB (RMS) RE 1 μPa SOUND LEVELS FROM ACOUSTIC INSTRUMENTATION MEASURED IN THE CHUKCHI SEA—Continued

| Instrument type | Model | Center Frequency (kHz) | Frequency Range (kHz) | Beam Width | Nominal Source Level (dB re 1 μPa rms) | In-beam 160 dB Distance (m) | Out-of-beam 160 dB Distance |
|---|---|---|---|---|---|---|---|
| Ultra-short baseline acoustic positioning system. | SonarDyne Ranger Pro. | 27 | 20–30 | NA | 215.1 | 47 | 8 m. |

For Shell's equipment recovery and maintenance at the Burger A well site where drilling took place in 2012, a vessel would be deployed at or near the well site using dynamic positioning thrusters while remotely operated vehicles or divers are used to perform the required activities. Sounds produced by the vessel while in dynamic positioning mode would be non-impulsive in nature and are thus evaluated at the ≥120 dB (rms) re 1 μPa.

In 2011, Statoil conducted geotechnical coring operations in the Chukchi Sea using the vessel *Fugro Synergy.* Measurements were taken using bottom founded recorders at 50 m (164 ft), 100 m (328 ft), and 1 km (0.6 mi) away from the borehole while the vessel was in dynamic positioning mode (Warner and McCrodan 2011). Sound levels measured at the recorder 1 km (0.6 mi) away ranged from 119 dB (rms) to 129 dB (rms) re 1 μPa. A propagation curve fit to the data and encompassing 90 percent of all measured values during the period of strongest sound emissions estimated sound levels would drop below 120 dB (rms) re 1 μPa at 2.3 km (1.4 mi).

Acoustic measurements of the *Nordica* in dynamic positioning mode while supporting Shell's 2012 drilling operation in the Chukchi Sea were made from multiple recorders deployed to monitor sounds from the overall drilling operation. Distances to these recorders ranged from 1.3 km (0.8 mi) to 7.9 km (4.9 mi) and maximum sound pressure levels ranged from 112.7 dB (rms) to 129.9 dB (rms) re 1 μPa. Preliminary analyses of these data indicate the maximum 120 dB (rms) re 1 μPa distance was approximately 4 km (2.5 mi) from the vessel. These same recorders measured sounds produced by the *Tor Viking II* while it operated near the Discoverer drill rig in 2012. The nature of the operations conducted by the *Tor Viking II* during the reported measurement periods varied and included activities such as anchor handling, circling, and possibly holding position using dynamic positioning thrusters. Distances to the 120 dB (rms) re 1 μPa level were estimated at 10 km (6 mi), 13 km (8 mi), and 25 km (15.5 mi) during these various measurement periods.

The vessel from which equipment recovery and maintenance would be conducted has not yet been determined. Under most circumstances, sounds from dynamic positioning thrusters are expected to be well below 120 dB (rms) re 1 μPa at distances greater than 10 km (6 mi). However, since some of the activities conducted by the *Tor Viking II* at the Burger A well site in 2012 may have included dynamic positioning, the 13 km (8 mi) distance has been selected as the estimated ≥120 dB (rms) re 1 μPa distance used in the calculations of potential Level B harassment below. A circle with a radius of 13 km (8 mi) results in an estimated area of 531 $km^2$ (205 $mi^2$) that may be exposed to continuous sounds ≥120 dB (rms) re 1 μPa.

**Comments and Responses**

A notice of NMFS' proposal to issue an IHA to Shell was published in the **Federal Register** on May 14, 2012 (78 FR 28412). That notice described, in detail, Shell's proposed activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals and the availability of marine mammals for subsistence uses. During the 30-day public comment period, NMFS received comment letters from the following: the Marine Mammal Commission (Commission); the Alaska Eskimo Whaling Commission (AEWC); the Alaska Wilderness League (AWL), Center for Biological Diversity, Earthjustice, Greenpeace, Natural Resources Defense Council, Northern Alaska Environmental Center, Sierra Club, and the Wilderness Society (collectively ''AWL''), Bureau of Ocean Energy Management (BOEM), and one private citizen.

Any comments specific to Shell's application that address the statutory and regulatory requirements or findings NMFS must make to issue an IHA are addressed in this section of the **Federal Register** notice.

*MMPA Concerns:*

*Comment 1:* The Commission recommends that NMFS continue to include proposed incidental harassment authorization language at the end of **Federal Register** notices but ensure that the language is consistent with that referenced in the main body of the **Federal Register** notice.

*Response:* NMFS agrees that this is a good recommendation and plans to include proposed incidental harassment authorization language at the end of **Federal Register** notices for Arctic oil and gas IHAs. NMFS will also try to ensure that the language is consistent with that referenced in the main body of the **Federal Register** notice.

*Comment 2:* The Commission recommends that NMFS require Shell to revise its take estimates to include Level B harassment takes associated with its ice gouge survey. In addition, AWL states that NMFS has not justified its decision to remove entirely Shell's ice gouge surveys from the ambit of the MMPA.

*Response:* NMFS does not agree with the Commission's recommendation and AWL's statement. As stated in the **Federal Register** notice for the proposed IHA and explained in Shell's IHA application, due to the low intensity and high frequency acoustic sources being used for the ice gouge surveys, this activity is not expected to result in takes of marine mammals. The acoustic equipment proposed to be used in the ice gouge survey includes single-beam bathymetric sonar, multi-beam bathymetric sonar, dual frequency side-scan sonar, and shallow sub-bottom profiler. Representative instruments of these types were measured during Statoil's 2011 site survey program in the Chukchi Sea. Operating frequencies, beam widths, and distances to 160 dB re 1 μPa for these high frequency instruments are summarized in Table 2. Due to the rapid attenuation of these higher frequency sounds and the narrow beam-widths where most of the sound energy is present, the impact from operating these instruments is not expected to be any greater than the operation of the vessel itself. Therefore, NMFS does not believe use of these

instruments would cause takes of marine mammals as defined under the MMPA.

*Impacts Analysis:*

*Comment 3:* The AEWC states that it wants to emphasize the growing importance of the fall bowhead whale hunt for Barrow and the Chukchi Sea communities. The AEWC states that it is concerned about NMFS' statement in the **Federal Register** notice for the proposed IHA that the subsistence hunt of the bowhead whales in Chukchi Sea communities ''takes place almost exclusively in the spring…'' The AEWC points out that its Chukchi Sea communities are increasingly being forced to look to fall hunting opportunities as ice conditions in the spring are making it more dangerous and difficult to meet its quotas. The AEWC states that this spring only 11 whales were taken: four in Savoonga, two in Gambell, and five in Pt. Hope. No whales were taken in Barrow. The AEWC asks NMFS to discuss the growing importance of the fall hunt for the communities.

*Response:* NMFS appreciates the additional information clarifying the role of the fall bowhead whale hunt in subsistence harvest activities. NMFS' analyses provided in the **Federal Register** notice for the proposed IHA was based on historical data as the most recent data from the same season may not be available at the time of analysis. NMFS has incorporated this information into the subsistence impact analysis in this document.

*Comment 4:* The BOEM states that there is an incorrect statement on page 28422 of the **Federal Register** notice for the proposed IHA where it states ''During the survey period most marine mammals are expected to be dispersed throughout the area, except during the peak of the bowhead whale migration through the Chukchi Seas, which occurs from late August into October.'' BOEM comments that NMFS use of the word ''peak'' is problematic. BOEM further states that ''the bowhead migration occurs in surges of groups moving from Canadian waters to the Alaskan Beaufort Sea beginning in August. Some bowheads are sporadically present in the proposed ancillary activity area from July 6 to December 25, but the bowhead migration begins to enter the activity area during late August, and more through the activity area as late November 26, per tagged whale data and aerial survey data. There would be few bowheads in the vicinity of the ancillary activities during July and August, the proposed period when much of the activity is proposed.''

*Response:* NMFS revised the sentence to ''During the survey period most marine mammals are expected to be dispersed throughout the area, with most of the bowhead whales migration through the Chukchi Sea between late August and late November.''

*Comment 5:* The AWL states that there are large gaps in basic scientific information about both the Chukchi Sea ecosystem and marine mammal responses to noise, and that these gaps prevent adequate analysis of the potential impacts of Shell's proposed seismic survey on wildlife. The AWL concludes that the gaps in information preclude defensible small numbers and negligible impact findings under the MMPA, constrain the designing of adequate mitigation measures, and undermine assessment of the potential effects of the proposed surveying pursuant to NEPA.

*Response:* Although NMFS agrees that it would be desirable to obtain additional information about both the Chukchi Sea ecosystem and marine mammal responses to noise in general, NMFS believes it has sufficient information to support its analysis of the potential impacts of Shell's proposed marine surveys on wildlife. As required by the MMPA implementing regulations at 50 CFR 216.102(a), NMFS has used the best scientific information available in assessing the level of take and whether the impacts would be negligible. The **Federal Register** notice for the proposed IHA, NMFS EA for the issuance of IHAs to take marine mammals incidental to open-water marine and seismic surveys in 2013, and this document all provide detailed analysis using the best available scientific information that enables NMFS to make the required determinations. In addition, the required monitoring and mitigation measures prescribed in the IHA NMFS issued to Shell will further reduce any potential impacts of the proposed marine surveys on marine mammals.

*Comment 6:* The AWL states that NMFS may not issue the IHA because it has not negated the possibility of serious injury from Shell's airguns. Further, the AWL noted that 18 years ago, NMFS once stated that permanent hearing loss qualifies as serious injury (60 FR 28381, May 31, 1995). A private citizen further states that the marine survey is ''massive deadly'' to marine mammals.

*Response:* NMFS does not agree with the private citizen and AWL's assessment. In fact, NMFS was able to make a preliminary determination in the **Federal Register** for the proposed IHA to Shell to take marine mammals incidental to its open-water marine surveys. In addition, NMFS' preliminary determination states that the potential effects would be Level B behavioral harassment by small numbers of marine mammals in the project vicinity, and no injury, serious injury, or mortality is expected.

Concerning the AWL's comments on NMFS 1995 proposed rule to implement the process to apply for and obtain an IHA, NMFS stated that authorizations for harassment involving the ''potential to injure'' would be limited to only those that may involve non-serious injury (60 FR 28379; May 31, 1995). While the **Federal Register** notice cited by the commenters states that NMFS considered PTS to be a serious injury (60 FR 28379; May 31, 1995), our understanding of anthropogenic sound and the way it impacts marine mammals has evolved since 1995, and NMFS no longer considers PTS to be a serious injury. NMFS has defined ''serious injury'' in 50 CFR 216.3 as ''...any injury that will likely result in mortality.'' There are no data that suggest that PTS would be likely to result in mortality, especially the limited degree of PTS that could hypothetically be incurred through exposure of marine mammals to seismic airguns at the level and for the duration that are likely to occur in this action.

Further, as stated several times in this document and previous **Federal Register** notices for seismic activities, there is no empirical evidence that exposure to pulses of airgun sound can cause PTS in any marine mammal, even with large arrays of airguns (see Southall *et al.* 2007). PTS is thought to occur several decibels above that inducing mild temporary threshold shift (TTS), the mildest form of hearing impairment (a non-injurious effect). NMFS concluded that cetaceans and pinnipeds should not be exposed to pulsed underwater noise at received levels exceeding, respectively, 180 and 190 dB re 1 μPa (rms). The established 180- and 190–dB re 1 μPa (rms) criteria are the received levels above which, in the view of a panel of bioacoustics specialists convened by NMFS before TTS measurements for marine mammals started to become available, one could not be certain that there would be no injurious effects, auditory or otherwise, to marine mammals. Additionally, NMFS has required monitoring and mitigation measures to negate the possibility of marine mammals being seriously injured or killed as a result of Shell's activities. In the proposed IHA, NMFS determined that Shell's activities are unlikely to even result in TTS. Based on this determination and the

explanation provided here, PTS is also not expected. Therefore, an IHA is appropriate.

*Comment 7:* The Commission requests NMFS use species-specific maximum density estimates as a basis for estimating the expected number of takes.

*Response:* To provide some allowance for the uncertainties, Shell calculated both ''maximum estimates'' as well as ''average estimates'' of the numbers of marine mammals that could potentially be affected. For a few marine mammal species, several density estimates were available, and in those cases the mean and maximum estimates were determined from the survey data. In other cases, no applicable estimate (or perhaps a single estimate) was available, so adjustments were used to arrive at ''average'' and ''maximum'' estimates. The species-specific estimation of these numbers is provided in the **Federal Register** notice for the proposed IHA. NMFS has determined that the average density data of marine mammal populations will be used to calculate estimated take numbers because these numbers are based on surveys and monitoring of marine mammals in the vicinity of the proposed project area. For several species whose average densities are too low to yield a take number due to extra-limital distribution in the vicinity of the proposed Chukchi Sea survey area, but whose chance occurrence has been documented in the past, such as killer whales, narwhales, and harbor porpoises, NMFS allotted a few numbers of these species to allow unexpected takes of these species.

*Comment 8:* The Commission requests NMFS require Shell to (1) estimate the numbers of marine mammals taken in the ice gouge survey and (2) base that estimate on the 120-dB re 1 μPa threshold rather than the 160-dB re 1 μPa threshold. For the second part of this comment, the Commission attached its comments to NMFS regarding NMFS Southwest Fisheries Science Center (SWFSC) fisheries research activities and outlined reasons that acoustic sources used in ice gouge surveys have temporal and spectral characteristics that suggest a lower threshold would be more precautionary.

*Response:* For the Commission's first comment regarding potential take of marine mammals in ice gouge survey, please refer to *Response* to *Comment 2.* As stated in that *Response,* NMFS does not believe that marine mammals would be taken as a result of the ice gouge survey.

Regarding the Commission's second comment, NMFS does not agree with the Commission's statement that acoustic sources used in ice gouge surveys have temporal and spectral characteristics that suggest a lower threshold is appropriate. Continuous sounds are those whose sound pressure level remains above that of the ambient sound, with negligibly small fluctuations in level (NIOSH, 1998; ANSI, 2005), while intermittent sounds are defined as sounds with interrupted levels of low or no sound (NIOSH, 1998). Thus, echosounder signals are not continuous sounds but rather intermittent sounds. Intermittent sounds can further be defined as either impulsive or non-impulsive. Impulsive sounds have been defined as sounds which are typically transient, brief (< 1 sec), broadband, and consist of a high peak pressure with rapid rise time and rapid decay (ANSI, 1986; NIOSH, 1998). Echosounder signals also have durations that are typically very brief (< 1 sec), with temporal characteristics that more closely resemble those of impulsive sounds than non-impulsive sounds, which typically have more gradual rise times and longer decays (ANSI, 1995; NIOSH, 1998). With regard to behavioral thresholds, we therefore consider the temporal and spectral characteristics of echosounder signals to more closely resemble those of an impulse sound than a continuous sound.

The Commission suggests that, for certain sources considered here, the interval between pulses would not be discernible to the animal, thus rendering them effectively continuous. However, an echosounder's ''rapid staccato'' of pulse trains is emitted in a similar fashion as odontocete echolocation click trains. Research indicates that marine mammals, in general, have extremely fine auditory temporal resolution and can detect each signal separately (e.g., Au *et al.,* 1988; Dolphin *et al.,* 1995; Supin and Popov, 1995; Mooney *et al.,* 2009), especially for species with echolocation capabilities. Therefore, it is highly unlikely that marine mammals would perceive echosounder signals as being continuous.

In conclusion, echosounder signals are intermittent rather than continuous signals, and the fine temporal resolution of the marine mammal auditory system allows them to perceive these sounds as such. Further, the physical characteristics of these signals indicate a greater similarity to the way that intermittent, impulsive sounds are received. Therefore, the 160-dB threshold (typically associated with impulsive sources) is more appropriate than the 120-dB threshold (typically associated with continuous sources) for estimating takes by behavioral harassment incidental to use of such sources.

Finally, we agree with the Commission's recommendation to revise existing acoustic criteria and thresholds as necessary to specify threshold levels that would be more appropriate for a wider range of sound sources, and are currently in the process of producing such revisions. In particular, NMFS recognizes the importance of context (e.g., behavioral state of the animals, distance) in behavioral responses. The current behavioral categorization (i.e., impulse vs. continuous) does not account for context and is not appropriate for all sound sources. Thus, updated NOAA Acoustic Guidance (*http://www.nmfs.noaa.gov/pr/acoustics/guidelines.htm*) will more appropriately categorize behavioral harassment criteria by activity type.

*Comment 9:* The Commission requests NMFS consult with experts in the field of sound propagation and marine mammal hearing to revise the acoustic criteria and thresholds as necessary to specify threshold levels that would be more appropriate for a wider range of sound sources, including shallow penetration subbottom profilers, echosounders, and side-scan sonar.

*Response:* NMFS is in the process of developing revised acoustic criteria and thresholds to for a variety of sources. The revised acoustic criteria will be peer-reviewed and made available for public comment. Until that process is complete, it is not appropriate to apply the new criteria and thresholds in any incidental take authorization. Instead, NMFS will continue its longstanding practice of considering specific modifications to the acoustic criteria and thresholds currently employed for incidental take authorizations only after providing the public with an opportunity for review and comment and responding to the comments.

*Comment 10:* The Commission requests NMFS require Shell to calculate the size of the Level A and B harassment zones for the ice gouge survey, using the 120-dB re 1 μPa isopleth for the shallow penetration sub-bottom profiler as the basis for determining the distance to the Level B disturbance zone.

*Response:* As noted in the **Federal Register** notice for the proposed IHA, a level A harassment zone for the ice gouge survey either does not exist or is expected to be in close proximity of the survey vessel. The sizes of the Level B harassment zones (received level at 160 dB re 1 μPa) for the ice gouge survey for various sources are listed in Table 2 of the **Federal Register** notice for the proposed IHA as well as in this

document. NMFS does not agree with the Commission that it is appropriate to use the 120-dB re 1 μPa isopleth for the shallow penetration sub-bottom profiler (as well as other acoustic equipment used in the ice gouge survey) as the basis for determining the distance to the Level B disturbance zone, with reasons given in *Response* to *Comment 8* above.

*Comment 11:* The AWL claims that NMFS underestimated the number of animals that would be harassed from Shell's surveying because it calculates harassment from Shell's proposed surveying based on the exposure of marine mammals to impulsive sounds at or above 160 dB. The AWL states that this uniform approach to harassment does not take into account known reactions of marine mammals in the Arctic to levels of noise well below 160 dB. Without citing specific research, the AWL claims that ''for harbor porpoises, behavioral changes, including exclusion from an area, can occur at received levels from 90–110 dB [near ambient level] or lower,'' and beluga whales ''are known to alter their migration paths in response to ice breaker noise at received levels as low as 80 dB [quiet ambient level].'' The AWL further appointed out that NMFS acknowledged the potential for behavioral disturbance to belugas at distances of 10–20 km and bowhead whales react to sound level lower than 160 dB.

*Response:* NMFS does not agree with AWL's assessment on acoustic effects of marine mammals. First, the AWL did not provide a reference on harbor porpoise behavioral responses and exclusion from an area to received levels at 90–110 dB or lower, which is near the ambient noise level. Second, for the beluga whale example at quiet ambient level, although also not supported by a reference, such a deviation could be attributed to noise exposure to continuous sound (icebreaker), rather than exposure to seismic impulses. Additionally, as Shell does not intend to use icebreakers during its operations, statements regarding beluga reactions to icebreaker noise are not relevant to this activity. Concerning the behavioral disturbance by belugas at distances of 10–20 km, there was no mention of received level, so it is irrelevant to the AWL's argument concerning 160 dB received noise levels.

Although some studies have shown bowhead responses to received seismic impulses under 160 dB re 1 μPa, the best information available to date results from the 1998 aerial survey (as supplemented by data from earlier years) as reported in Miller *et al.* (1999). In 1998, bowhead whales below the water surface at a distance of 20 km (12.4 mi) from an airgun array received pulses of about 117–135 dB re 1 μPa rms, depending upon propagation. Corresponding levels at 30 km (18.6 mi) were about 107–126 dB re 1 μPa rms. Miller *et al.* (1999) surmise that deflection may have begun about 35 km (21.7 mi) to the east of the seismic operations, but did not provide SPL measurements to that distance and noted that sound propagation has not been studied as extensively eastward in the alongshore direction, as it has northward, in the offshore direction. Therefore, while this single year of data analysis indicates that bowhead whales may make minor deflections in swimming direction at a distance of 30–35 km (18.6–21.7 mi), there is no indication that the SPL where deflection first begins is at 120 dB; it could be at another SPL lower or higher than 120 dB. Miller *et al.* (1999) also note that the received levels at 20–30 km (12.4–18.6 mi) were considerably lower in 1998 than have previously been shown to elicit avoidance in bowheads exposed to seismic pulses. However, the seismic airgun array used in 1998 was larger than the ones used in 1996 and 1997. Therefore, NMFS believes that it cannot scientifically support adopting any single SPL value below 160 dB and apply it across the board for all species and in all circumstances. Second, as stated in the past, NMFS does not believe that minor course corrections during a migration will always equate to ''take'' under the MMPA. This conclusion is based on controlled exposure experiments conducted on migrating gray whales exposed to the U.S. Navy's low frequency sonar (LFA) sources (Tyack 2009). When the source was placed in the middle of the migratory corridor, the whales were observed deflecting around the source during their migration. However, such minor deflection is considered not to be biologically significant. To show the contextual nature of this minor behavioral modification, recent monitoring studies of Canadian seismic operations indicate that when, not migrating, but involved in feeding, bowhead whales do not move away from a noise source at an SPL of 160 dB. Therefore, while bowheads may avoid an area of 20 km (12.4 mi) around a noise source, when that determination requires a post-survey computer analysis to find that bowheads have made a 1 or 2 degree course change, NMFS believes that does not rise to a level of a ''take.'' NMFS therefore continues to estimate ''takings'' under the MMPA from impulse noises, such as seismic, as being at a distance of 160 dB (re 1 μPa). Although it is possible that marine mammals could react to any sound levels detectable above the ambient noise level within the animals' respective frequency response range, this does not mean that such animals would react in a biologically significant way. According to experts on marine mammal behavior, the degree of reaction which constitutes a ''take,'' i.e., a reaction deemed to be potentially biologically significant or that could potentially disrupt the migration, breathing, nursing, breeding, feeding, or sheltering, etc., of a marine mammal is complex and context specific, and it depends on several variables in addition to the received level of the sound by the animals. These additional variables include, but are not limited to, other source characteristics (such as frequency range, duty cycle, continuous vs. impulse vs. intermittent sounds, duration, moving vs. stationary sources, etc.); specific species, populations, and/or stocks; prior experience of the animals (naive vs. previously exposed); habituation or sensitization of the sound by the animals; and behavior context (whether the animal perceives the sound as predatory or simply annoyance), etc. (Southall *et al.* 2007).

Currently NMFS is working on revising its noise exposure criteria based on the best and most recent scientific information. These criteria will be used to develop methodologies to calculate behavioral responses of marine mammals exposed to sound associated with seismic surveys (primary source is airguns). Nevertheless, at the current stage and until the updated criteria are available (i.e., undergone full evaluation including internal review, peer review, and public comment), NMFS will continue to use the 160-dB threshold for determining the level of take of marine mammals by Level B harassment for impulse noise (such as from airguns).

*Comment 12:* The AWL states that NMFS should examine more closely the effects of noise from dynamic positioning. The AWL states that considering that the vessel that would be conducting the operations has not yet been identified, NMFS must follow the precautionary principle and base take estimates on the 25 km 120-dB distance.

*Response:* NMFS provided a detailed analysis and evaluation on the potential effects of noise from dynamic positioning on the marine environment in the **Federal Register** notice for the proposed IHA and EA, as well as in this document. As stated in the analysis, several choices for acoustic modeling of dynamic positioning are available based on prior measurements of vessels

conducting such activities. The loudest noise source seemed to be the Tor Viking II during Shell's 2012 drilling operations in the Chukchi Sea; the 120 dB re 1 μPa received levels from the *Tor Viking* were measured at 10 km (6 mi), 13 km (8 mi), and 25 km (15.5 mi) during these various measurement periods. Nevertheless, various activities other than the dynamic positioning operation were being performed at the time measurements were conducted, such as anchor handling and cycling. Therefore, NMFS does not consider that the largest radius represents the most accurate Level B harassment zone since for Shell's proposed 2013 marine surveys, the supporting vessel during equipment recovery and maintenance activities would only be engaged in dynamic position while supporting diving operations. Therefore, radius of 13 km (8 mi) was chosen as the zone for Level B behavioral harassment prior to SSV tests being conducted.

*Comment 13:* AWL argues that the effects of ice gouge surveying should be considered. AWL states that NMFS' dismissal of potential effects based on marine mammal hearing is not adequately supported. Citing a comment letter by David E. Bain submitted to NMFS in 2010, the AWL argues that NMFS' approach fails to take into consideration the fact that (1) juvenile whales, based on their smaller size, likely hear sounds of higher frequencies than adults of the same species; (2) that sound sources contain frequencies beyond the ''normal'' frequency in the form of undertones, overtones, distortion, or noise; (3) NMFS failed to consider the ''beat frequency'', that when a source simultaneously emits sound of more than one frequency, it will also emit energy at the difference between the two frequencies; (4) NMFS fails to take into account the fact that information about hearing abilities of bowhead whales is based on estimates since bowheads have not been the subject of direct testing and there is inherent uncertainty in these estimates; and (5) the **Federal Register** notice does not address the fact that toothed whales are sensitive to high-frequency sounds including those over 100 kHz.

*Response:* NMFS considered the potential effects of Shell's proposed ice gouge surveys in the Chukchi Sea in its **Federal Register** for the proposed IHA. As stated in the notice as well as the EA, the reason NMFS does not think take of marine mammals is likely from ice gouge surveys is because the active acoustic devices being used in these surveys are either in the frequency range above 180 kHz, which is beyond marine mammals functional hearing range, or with low source levels. In addition, due to their high-frequency nature, there is much absorption during sound propagation, which weakens much of the acoustic intensity within a relatively short range. NMFS has addressed Dr. Bain's comment letter concerning his above five points in the **Federal Register** for the issuance of an IHA to Shell in 2010 (75 FR 49710; August 13, 2010), and the following is the summary.

Although it is possible that juvenile animals could have better hearing at high-frequency ranges similar to humans, the overall sensitivity that defines hearing is believed to be more related to different hearing groups (see Southall *et al.* 2007) than to animals' age groups. Therefore, it is incorrect to assume that juvenile whales hear sounds of higher frequencies because of their small size, regardless of species and functional hearing groups. In addition, the reason that juvenile animals (including humans) have slightly better high-frequency hearing is related to age rather than size (the principle behind it is a biological phenomenon called presbycusis, or aging ear).

Regarding point (2) concerning ''normal'' frequency, which was not defined in the comment, NMFS assumes that Dr. Bain refers to the frequenc(ies) outside the manufactures' specifications for their acoustic devices. Although these outlier noises could be a concern for high-frequency acoustic sources, especially if the frequencies are within the sensitive hearing range of marine mammals, NMFS does not believe these noises have high acoustic intensities in most cases. Nevertheless, NMFS requested that Shell have these acoustic devices measured at the SSV tests. The SSV reports from Shell's 2010 90-day monitoring report provided a detailed description of the acoustic characteristics of the acoustic devices used in ice gouge surveys, and none of the equipment has significant sidebands that could affect marine mammals. Please refer to Shell's 2010 90-day monitoring report for detailed descriptions of the acoustic equipment used in ice gouge surveys (Reiser *et al.* 2011).

In regards to point (3), in order to produce ''beat frequency,'' not only do the two sources have to be very close to each other, they also have to be perfectly synchronized. In the case of Shell's high-frequency sonar, these two interfering frequencies will need to be produced by one device to use the non-linearity of water to purposefully generate the different frequency between two high frequencies. Even so, it is a very inefficient way to generate the beat frequency, with only a low percentage of the original intensity with very narrow beamwidth. Therefore, NMFS does not consider this to be an issue of concern.

NMFS is aware that no direct measurements of hearing exist for bowhead and other baleen whales, and theories regarding their sensory capabilities are consequently speculative (for a detailed assessment by species using the limited available information, see Erbe 2002). In these species, hearing sensitivity has been estimated from behavioral responses (or lack thereof) to sounds at various frequencies, vocalization frequencies they use most, body size, ambient noise levels at the frequencies they use most, and cochlear morphometry and anatomical modeling (Richardson *et al.* 1995; Wartzok and Ketten 1999; Houser *et al.* 2001; Erbe 2002; Clark and Ellison 2004; Ketten *et al.* 2007). Though detailed information is lacking on the species level, the combined information strongly suggests that mysticetes are likely most sensitive to sound from perhaps tens of Hz to ~10 kHz (Southall *et al.* 2007). Although hearing ranges for toothed whales (mid- and high-frequency cetaceans) fall between 100s Hz to over 100 kHz, their most sensitive frequency lies between 10 to 90 kHz, and sensitivity falls sharply above 100 kHz.

Mitigation:

*Comment 14:* AEWC requested that NMFS incorporate the following provisions of the 2013 CAA as binding mitigation measures in the IHA issued to Shell: Section 202(a) and (c): Com-Center General Communications Scheme; Section 204: Standardized Log Books; Section 302: Barge and Transit Vessel Operations; Section 402: Sound Signature Tests; Section 501: General provisions for Avoiding Interference with Bowhead Whales or Subsistence Whale Hunting Activities; Section 502(b): Limitations on Geophysical Activity in the Chukchi Sea; Section 505: Termination of Operations and Transit Through the Bering Strait; and Title VI, Sections 601 and 602: Late Season Seismic Operations.

*Response:* NMFS has incorporated the above provisions of the 2013 CAA into the IHA issued to Shell, as these measures will help ensure there is no unmitigable adverse impact on the availability of affected species or stock(s) for subsistence uses.

*Comment 15:* The Commission requests NMFS require Shell to not initiate or continue seismic activities if (1) an aggregation of bowhead whales or gray whales (12 or more whales of any age/sex class that appear to be engaged

in a non-migratory, significant biological behavior (e.g., feeding, socializing)) is observed within the 160-dB re 1 μPa zone or (2) a female-calf pair is observed within the 120-dB re 1 μPa zone.

*Response:* NMFS did not propose the suspension of seismic activities for an aggregation of bowhead whales or gray whales (12 or more whales of any age/sex class) within the Level B harassment zone of 160 dB because the size of the zone is very small (1,800 m radius), and it is not likely an aggregation of 12 whales could occur in such a small zone. In addition, given the seismic vessel would be moving at a speed of 4—5 knots, and assuming the whales would be relatively stationary, the exposure of such aggregation of whales to received levels above 160 dB re 1 μPa would be less than 13 minutes. Nevertheless, NMFS has worked with Shell to include in the IHA the Commission's recommendation that Shell not initiate or continue seismic activities if an aggregation of bowhead or gray whales (12 or more whales of any age/sex class that appear to be engaged in a non-migratory, significant biological behavior) is observed within the 160-dB re 1 μPa isopleth.

However, NMFS does not agree with the Commission's recommendation that suspension of seismic activities is warranted for a female-calf pair within the 120-dB re 1 μPa zone when the animals are not likely to be harassed. Although it has been suggested that female baleen whales with calves ''show a heightened response to noise and disturbance,'' there is no evidence that such ''heightened response'' is biologically significant orconstitutes a ''take'' under the MMPA. Additionally, in the Chukchi Sea, the migratory corridor for bowhead whales is wider and more open, thus the 120–dB ensonified zone would be unlikely to impede bowhead whale migration. The animals would be able to swim around the ensonified area.

*Comment 16:* The AWL states NMFS should include provisions in the IHA that restrict Shell's operations based on geographic location, and/or time of year, such as restrict activity in certain areas, including subsistence use areas, areas of high productivity or diversity; areas that are important for feeding, migration, or other parts of the life history of species; or areas of biogenic habitat, structure-forming habitat, or habitat for endangered or threatened species.

*Response:* While processing the proposed IHA, NMFS has worked with Shell and conducted extensive analysis on the areas where Shell's proposed open-water marine surveys would occur. The areas Shell proposed to have its proposed marine surveys are analyzed in the proposed IHA process, during the section 7 consultation under the ESA, as well as under the NEPA analysis for preparing the EA. However, NMFS did not find that further restriction is needed given that no areas of high productivity or diversity, areas that are important for feeding and migration, or critical habitat for endangered or threatened species were found. Nevertheless, time and area certain restrictions are included in the IHA to minimize potential impacts on subsistence activities which are consistent with the CAA Shell has signed. These time and area restrictions are:

- Vessels transitting east of Bullen Point to the Canadian border should remain at least five miles offshore during transit along the coast, provided ice and sea condition allow,
- Vessels should remain as far offshore as weather and ice conditions allow, and at least five miles offshore during transit,
- From August 31 to October 31 vessels in the Chukchi Sea or Beaufort Sea shall remain at least 20 miles offshore of the coast of Alaska from Icy Cape in the Chukchi Sea to Pitt Point on the east side of Smith Bay in the Beaufort Sea whether in transit or engaging in activities in support of oil and gas operations unless ice conditions or an emergency that threatens the safety of the vessel or crew prevents compliance with this requirement,
- Beginning September 15, and ending with the close of the fall bowhead whale hunt, if Wainwright, Pt. Lay, or Pt. Hope intend to whale in the Chukchi Sea, no more than two geophysical activities employing geophysical equipment will occur at any one time in the Chukchi Sea. During the fall bowhead whale hunt, geophysical equipment will not be used within 30 miles of any point along the Chukchi Sea coastline. Industry participants will contact the Whaling Captains' Associations of each villages to determine if a village is prepared to whale and will notify the AEWC of any response, and
- All Industry participant vessels shall complete operations in time to allow such vessels to complete transit through the Bering Strait to a point south of 59 degrees North latitude no later than November 15, 2013.

*Comment 17:* The AWL states that NMFS should examine imposing requirements for the use of new technology that could reduce the footprint of seismic exploration. The AWL cited an expert conference in February in Silver Spring, Maryland, by NMFS on alternative technologies for offshore energy production and requested that NMFS consider (1) mandating the use of marine vibroseis or other technologies in some or all of the survey area; (2) mandating the testing of marine vibroseis in a pilot area, precedent to a decision to permit seismic activity, with an obligation to accrue data on environmental impacts; (3) deferring the permitting of surveys in part or all of the survey area until effective mitigative technologies, such as marine vibroseis, become available; (4) providing incentives for Shell's use of these technologies as was done for passive acoustic monitoring systems; and (5) exacting funds from Shell to support accelerated mitigation research in this area.

*Response:* First, the February workshop (not an ''expert conference'') in Silver Spring, Maryland, titled Quieting Technologies for Reducing Noise during Seismic Surveying and Pile Driving, was convened by BOEM, not NMFS. The goals of the workshop, as stated in the Web site of the workshop, were to (1) review and examine recent developments (existing, emerging, and potential) in quieting technologies for seismic surveying, whether proposed or in development; (2) identify the requirements for operation and limitations for using these technologies; (3) evaluate data quality and cost-effectiveness of these technologies as compared to that from existing marine acoustic technologies; (4) identify the acoustic characteristics of new technologies in varying environments compared to that from existing technologies; (5) examine potential environmental impacts from these technologies; (6) identify which technologies, if any, provide the most promise for full or partial traditional use and specify the conditions that might warrant their use (e.g., specific limitations to water depth, use in Marine Protected Areas, etc.); and (7) identify next steps, if appropriate, for the further development of these technologies, including potential incentives for field testing. Most of these technologies are still in research and development stages and have not been field tested. The workshop provided a forum for discussion and evaluation of such technologies, including vibroseis. NMFS supports and encourages both the development and use of technologies that will reduce impacts to marine mammals and other marine species. These alternative technologies will likely be adopted for use to replace some subset of future seismic survey

activities once their development is further along and their environmental impacts, especially as compared to seismic airguns, are better understood. . However, NMFS does not believe it can currently mandate the use of such technologies.

*Monitoring:*

*Comment 18:* The Commission requests NMFS require Shell to conduct sound source verification (SSV) for the ice gouge survey at varying depths. The Commission reasons that it is particularly important for the ice gouge survey because it would be conducted in relatively shallow nearshore waters where propagation models are of limited utility and bottom topography is more influential in these cases.

*Response:* NMFS does not agree with the Commission's assessment that propagation models are of limited utility in areas of relatively shallow waters where ice gouge surveys are proposed. Nevertheless, SSV tests will be performed to confirm the modeled sound propagation provided in the **Federal Register** notice for the proposed IHA. However, since the difference of water depth in the proposed ice gouge survey area is relatively small (between 12 and 42 m), NMFS does not believe SSV at varying water depth increments is necessary to yield meaningful differences in propagation distances.

*Comment 19:* The Commission requests NMFS only authorize an in-season adjustment in the size of the exclusion and/or disturbance zones if the size(s) of the estimated zones are determined to be inadequate. The Commission states that the purpose of SSV is to ensure protection of marine mammals, and one way to reduce risk to marine mammals would be to only allow expansion of the exclusion and/or disturbance zones.

*Response:* NMFS does not agree with the Commission's recommendation. While may seem to be more protective to increase the exclusion zone if the effectiveness of visual-based marine mammal monitoring remains the same regardless of the size of the zone, the actual result may not be so. For example, when the SSV suggests that the exclusion and/or disturbance zones are smaller than the ones modeled and monitoring still focus on the larger modeled zones, it is likely that the effectiveness of marine mammal monitoring could be reduced as the area to be monitored would be larger than necessary. In addition, larger than realistic exclusion zones would cause unnecessary power-down and shutdowns, which could increase the total duration of the marine surveys, and causes unnecessary impacts to the marine environment.

*Comment 20:* The Commission requests NMFS require Shell to deploy a sufficient number of trained and experienced, NMFS-approved vessel-based observers on the ice gouge survey vessel to ensure adequate monitoring of the Level A and B harassment zones during daylight hours throughout the entire survey period.

*Response:* As stated in the **Federal Register** notice for the proposed IHA, the level A harassment zone for the ice gouge survey either does not exist or is expected in close proximity of the survey vessel. Nevertheless, Shell is required to deploy a sufficient number of trained and experienced, NMFS-approved vessel-based protected species observers (PSOs) on the ice gouge survey vessel to ensure adequate monitoring of marine mammals during daylight hours throughout the entire survey period.

*Comment 21:* The Commission requests NMFS require Shell to monitor for marine mammals 30 minutes before, during, and 30 minutes after survey operations and other activities have ceased.

*Response:* Shell is required to monitor for marine mammals 30 minutes before, during, and 30 minutes after survey operations and other activities have ceased.

*Comment 22:* The Commission requests NMFS encourage Shell to deploy additional protected species observers to (1) increase the probability of detecting all marine mammals in or approaching the Level A and B harassment zones and (2) assist in the collection of data on activities, behaviors, and movements of marine mammals around the source.

*Response:* NMFS agrees that an adequate number of PSOs is critical to ensure complete coverage in visual monitoring and implementing mitigation measures. While it is reasonable to conclude that additional PSOs would increase detection capability to a certain degree, the number of PSOs that can be stationed on vessels is limited by the available berth spaces. Shell plans to have 4 to 5 PSOs aboard the survey vessel and will have 100% monitoring coverage during all periods of survey operations in daylight. In addition, each PSO is limited to maximum of 4 consecutive hours per watch and maximum of 12 hours of watch time per day. NMFS believes that the number of PSOs onboard is adequate given the limited space available on the survey vessel.

*Comment 23:* The Commission requests NMFS require Shell to report the preliminary results of its in-situ sound source and sound propagation measurements within five days.

*Response:* NMFS requires Shell to report the preliminary results of the in-situ SSV tests within five days of completing the tests, followed by a report in 14 days. This will allow Shell to review the initial results and to catch any error that might be overlooked during the initial five-day reporting.

*Comment 24:* The AWL states that the proposed IHA's mitigation measures rely on visual monitoring of exclusion zones to keep marine mammals from encountering potentially injurious levels of noise. Citing the example of ION Geophysical's 90-day monitoring report, the AWL points out the difficulty of monitoring these zones at distances greater than 2.2 miles. The AWL further states that the Open-water peer review panel reviewing Shell's proposed activities also noted serious limitations of visual monitoring, and quoting that ''the ability to sight animals declines with distance, and disturbance of animals beyond sighting distance may go undetected,'' and ''observations become less efficient to the point of being completely ineffective as sighting conditions deteriorate (e.g., nighttime, high sea state, precipitation or fog.'' The AWL further quotes ION's 90-day report as saying ''nights with fog, no ambient light, or heavy seas made observations nearly impossible.''

*Response:* NMFS recognizes the limitations of visual monitoring as distance increases. However, Shell's proposed open-water marine survey would employ a small airgun array of 40 $in^3$, and the modeled 180- and 190-dB exclusion zones are expected to be at 160 and 50 m from the source, respectively. Therefore, NMFS believes that at these short distances, vessel-based visual monitoring is effective. In fact, to address AWL's concern regarding the proposed mitigation measures depending on visual monitoring of the exclusion zone, the peer-review panel provided detailed analysis in its final report regarding Shell's use of vessel-based protected species observation as the primary monitoring element for the proposed marine surveys. The panel states that it ''sees this as appropriate, given the composition of the operations and expected spatial scale of influence, and finds the above objectives [ensuring disturbance to marine mammals and subsistence hunts is minimized and all permit stipulations are followed, documenting the effects of the proposed survey activities on marine mammals, and collecting baseline data on the occurrence and distribution of marine

mammals in the study area] as largely appropriate and achievable.''

In addition, NMFS recognizes the limitations of visual monitoring in darkness and other inclement weather conditions. Therefore, in the IHA to Shell, NMFS requires that no seismic airgun can be ramped up when the entire exclusion zones are not visible. However, Shell's operations will occur in an area where periods of darkness do not begin until early September. Beginning in early September, there will be approximately 1–3 hours of darkness each day, with periods of darkness increasing by about 30 min each day. By the end of the survey period, there will be approximately 8 hours of darkness each day. These conditions provide MMOs favorable monitoring conditions for most of the time.

*Comment 25:* Citing ION's error in its initial exclusion zone measurements, the AWL states that sound measurements used to estimate the size of safety radii from which animals should be excluded can easily be miscalculated.

*Response:* Although NMFS recognizes the error made by ION's contractor during the sound source verification measurement and the radius of the 180-dB exclusion was estimated less than it would be, NMFS does not agree with AWL's speculation that sound measurements used to estimate the size of exclusion zones can be ''easily miscalculated.'' The ION incident was not due to miscalculation. It was due to an human error in data handling and is preventable. NMFS has subsequently discussed this with ION and its contractor to make sure that rigorous checks and verification are performed to ensure no error in data handling.

Subsistence Issues:

*Comment 26:* The Commission recommends that NMFS encourage the development of a Conflict Avoidance Agreement (CAA) for Shell's proposed activities that involves all potentially affected communities and co-management organizations and that accounts for potential adverse impacts on all marine mammal species taken for subsistence purposes including, but not limited to, bowhead whales.

*Response:* As stated in the **Federal Register** notice for the proposed IHA, NMFS encouraged Shell to negotiate and sign a CAA to ensure that its proposed activities would not have unmitigable impacts to subsistence use of marine mammal in the proposed action area. Shell has signed the 2013 CAA, and is commended by the AEWC for engaging with AEWC in the negotiations and committing to ongoing work with the local community to ensure the protection of the subsistence traditions.

*Comment 27:* The AEWC expresses its concerns that Shell's Plan of Cooperation (POC) was not completed before NMFS made a preliminary determination in the **Federal Register** for the proposed IHA. The AEWC recommends that in the future the POC should be completed and submitted to NMFS along with the IHA application or that NMFS adopt and incorporate the signed CAA.

*Response:* Regulations at 50 CFR 216.104(a)(12) require applicants for IHAs in Arctic waters to submit a Plan of Cooperation (POC), which, among other things, requires the applicant to meet with affected subsistence communities to discuss the proposed activities. NMFS received a draft POC at the time from Shell while analyzing its proposed marine survey activities. However, Shell subsequently revised its proposed survey and limited its activities to only the Chukchi Sea, as opposed to both the Beaufort and Chukchi Seas as previously planned. Additional meetings were planned by Shell and the native communities to clarifying the project modification, which delayed the completion of the POC. Nevertheless, NMFS believes that it had adequate information from the draft POC to conduct the analyses and make a preliminary determination. Should a significant issue develop after the publication of the **Federal Register** notice for the proposed IHA, the final IHA would not be issued until such issues are resolved. NMFS received the final POC from Shell on June 17, 2013, describing in details the stakeholder meetings and the outcomes.

*NEPA Concern:*

*Comment 28:* AWL states that NMFS should not proceed with authorizations for individual projects like Shell's surveying until its programmatic EIS is complete. AWL supports its statement by quoting C.F.R. 1506.1(c): ''While work on a required program environmental impact statement is in progress and the action is not covered by an existing program statement, agencies shall not undertake in the interim any major Federal action covered by the program which may significantly affect the quality of the human environment.''

*Response:* NMFS does not agree with the AWL statement. The AWL misunderstood the C.F.R. language, where it clearly states that ''agencies shall not undertake in the interim any major Federal actions covered by the program which may significantly affect the quality of the human environment,'' in which case a FONSI could not be issued. In regard to the Shell's proposed open-water marine surveys, NMFS has prepared an EA and issued a FONSI.

While the analysis contained in the Final EIS will apply more broadly to Arctic oil and gas operations, NMFS' issuance of an IHA to Shell for the taking of several species of marine mammals incidental to conducting its open-water marine survey in the Chukchi Sea in 2013, as analyzed in the EA, is not expected to significantly affect the quality of the human environment. Shell's surveys are not expected to significantly affect the quality of the human environment because of the limited duration and scope of operations.

*Comment 29:* The AWL states that NMFS must conduct a site-specific NEPA analysis of this action that considers meaningful alternatives. In preparing an EIS, agencies must ''rigorously explore and objectively evaluate all reasonable alternatives'' to the proposed action. Agencies must identify and assess those alternatives that would ''avoid or minimize adverse effects of [proposed] actions upon the quality of the human environment.'' The AWL further states that the discussion of alternatives ''is the heart of the [EIS],'' and the ''consideration of alternatives is critical to the goals of NEPA'' even where a proposed action does not trigger the EIS process. The AWL further states that meaningful alternatives would include a true no-action alternative that reflects that Shell cannot legally proceed in the absence of take authorization, and that NMFS should also consider alternatives that require the mitigation measures of time and/or area closures and the use of new technologies that may address some of the deficiencies in visual monitoring, and the alternatives to using the 160-dB threshold for impulse noise.

*Response:* NMFS prepared an EA that includes an analysis of potential environmental effects associated with NMFS' issuance of an IHA to Shell to take marine mammals incidental to conducting its marine surveys in the Chukchi Sea during the 2013 open-water season. The EA contains detailed evaluation of all reasonable alternatives to the proposed action. The alternatives include a no-action alternative which assumes Shell, TGS, and SAE will not proceed with open-water marine and seismic surveys if take authorizations were not issued, and an additional alternative that call for the use of active acoustic monitoring and aerial surveys to supplement ship-based visual monitoring. All alternatives that would avoid or minimize adverse effects of the actions are discussed in the EA. Please

refer to NMFS EA for detailed information.

*Comment 30:* The AWL states that NMFS should consider cumulative impacts of other oil and gas activities and other human activities planned for the Arctic Ocean in assessing Shell's proposed surveying.

*Response:* NMFS prepared an EA to analyze and address cumulative impacts of other oil and gas activities planned for the Arctic Ocean. The oil and gas related activities in the U.S. Arctic in 2013 include this activity; TGS' proposed 2D seismic sruveys in the Chukchi Sea, and SAE's proposed 3D seismic survey in the Beaufort Sea. Seismic survey activities in the Canadian and Russian Arctic occur in different geophysical areas, therefore, they are not analyzed under the NMFS 2013 EA. Other appropriate factors, such as Arctic warming, military activities, and noise contributions from community and commercial activities were also considered in NMFS' 2013 EA. Please refer to that document for further discussion of cumulative impacts.

*ESA Concern:*

*Comment 31:* The AWL states that although NMFS has completed a programmatic biological opinion for Arctic oil and gas activities, it must also thoroughly analyze the impacts of the specific activities authorized here including future impacts. The AWL further states that in order to comply with the ESA, this site-specific analysis must include an incidental take statement specifying the number and type of takes expected.

*Response:* For the issuance of the IHA to Shell, NMFS' Permits and Conservation Division initiated consultation with NMFS Alaska Regional Office (AKRO) Protected Resources Division under section 7 of the ESA on the issuance of an IHA to Shell under section 101(a)(5)(D) of the MMPA for this activity. The consultation took into consideration the specific activities proposed to be authorized and all aspects of current and future impacts to the species. A Biological Opinion was issued on June 19, 2013, which concludes that issuance of the IHA is not likely to jeopardize the continued existence of the ESA-listed marine mammal species. In addition, analysis by NMFS AKRO showed that humpback whale will not be affected, therefore, no take was authorized. NMFS will issue an Incidental Take Statement under this Biological Opinion which contains reasonable and prudent measures with implementing terms and conditions to minimize the effects of take of listed species.

*Miscellaneous:*

*Comment 32:* The BOEM states that if there have been changes to Shell's proposed activities and schedule as provided for in the proposed IHA, subsequent to their planned village meetings during May, then BOEM needs to be advised of the changes so those changes can be considered in BOEM's NEPA analysis.

*Response:* NMFS will coordinate with project applicants in the future to make sure BOEM is updated on any changes to the proposed activities and schedules.

**Description of Marine Mammals in the Area of the Specified Activity**

The marine mammal species under NMFS jurisdiction most likely to occur in the seismic survey area include nine cetacean species, beluga whale (*Delphinapterus leucas*), harbor porpoise (*Phocoena phocoena*), killer whale (*Orcinus orca*), narwhal (*Monodon monoceros*), bowhead whale (*Balaena mysticetus*), gray whale (*Eschrichtius robustus*), minke whale (*Balaenoptera acutorostrata*), fin whale (*B. physalus*), and humpback whale (*Megaptera novaeangliae*), and four pinniped species, ringed (*Phoca hispida*), spotted (*P. largha*), bearded (*Erignathus barbatus*), and ribbon seals (*Histriophoca fasciata*).

The bowhead, fin, and humpback whales are listed as ''endangered'', and the ringed and bearded seals are listed as ''threatened'' under the Endangered Species Act (ESA) and as depleted under the MMPA. Certain stocks or populations of gray and beluga whales and spotted seals are also listed under the ESA, however, none of those stocks or populations occur in the proposed activity area.

Shell's application contains information on the status, distribution, seasonal distribution, and abundance of each of the species under NMFS jurisdiction mentioned in this document. Please refer to the application for that information (see ADDRESSES). Additional information can also be found in the NMFS Stock Assessment Reports (SAR). The Alaska 2012 SAR is available at: *http://www.nmfs.noaa.gov/pr/sars/pdf/ak2012.pdf.*

*Potential Effects of the Specified Activity on Marine Mammals*

Operating active acoustic sources such as airgun arrays, pinger systems, and vessel activities have the potential for adverse effects on marine mammals.

*Potential Effects of Airgun Sounds on Marine Mammals*

The effects of sounds from airgun pulses might include one or more of the following: tolerance, masking of natural sounds, behavioral disturbance, and temporary or permanent hearing impairment or non-auditory effects (Richardson *et al.* 1995). As outlined in previous NMFS documents, the effects of noise on marine mammals are highly variable, and can be categorized as follows (based on Richardson *et al.* 1995):

(1) Behavioral Disturbance

Marine mammals may behaviorally react to sound when exposed to anthropogenic noise. These behavioral reactions are often shown as: changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where noise sources are located; and/or flight responses (e.g., pinnipeds flushing into water from haulouts or rookeries).

The biological significance of many of these behavioral disturbances is difficult to predict, especially if the detected disturbances appear minor. However, the consequences of behavioral modification could be expected to be biologically significant if the change affects growth, survival, and reproduction. Some of these potential significant behavioral modifications include:

- Drastic change in diving/surfacing patterns (such as those thought to be causing beaked whale stranding due to exposure to military mid-frequency tactical sonar);
- Habitat abandonment due to loss of desirable acoustic environment; and
- Cease feeding or social interaction.

For example, at the Guerreo Negro Lagoon in Baja California, Mexico, which is one of the important breeding grounds for Pacific gray whales, shipping and dredging associated with a salt works may have induced gray whales to abandon the area through most of the 1960s (Bryant *et al.* 1984). After these activities stopped, the lagoon was reoccupied, first by single whales and later by cow-calf pairs.

The onset of behavioral disturbance from anthropogenic noise depends on both external factors (characteristics of noise sources and their paths) and the receiving animals (hearing, motivation,

experience, demography) and is also difficult to predict (Southall *et al.* 2007).

Currently NMFS uses 160 dB re 1 μPa (rms) at received level for impulse noises (such as airgun pulses) as the threshold for the onset of marine mammal behavioral harassment.

In addition, behavioral disturbance is also expressed as the change in vocal activities of animals. For example, there is one recent summary report indicating that calling fin whales distributed in one part of the North Atlantic went silent for an extended period starting soon after the onset of a seismic survey in the area (Clark and Gagnon 2006). It is not clear from that preliminary paper whether the whales ceased calling because of masking, or whether this was a behavioral response not directly involving masking (i.e., important biological signals for marine mammals being ''masked'' by anthropogenic noise; see below). Also, bowhead whales in the Beaufort Sea may decrease their call rates in response to seismic operations, although movement out of the area might also have contributed to the lower call detection rate (Blackwell *et al.* 2009a; 2009b). Some of the changes in marine mammal vocal communication are thought to be used to compensate for acoustic masking resulting from increased anthropogenic noise (see below). For example, blue whales are found to increase call rates when exposed to seismic survey noise in the St. Lawrence Estuary (Di Iorio and Clark 2009). The North Atlantic right whales (*Eubalaena glacialis*) exposed to high shipping noise increase call frequency (Parks *et al.* 2007) and intensity (Parks *et al.* 2010), while some humpback whales respond to low-frequency active sonar playbacks by increasing song length (Miller *el al.* 2000). These behavioral responses could also have adverse effects on marine mammals.

*Mysticete:* Baleen whales generally tend to avoid operating airguns, but avoidance radii are quite variable. Whales are often reported to show no overt reactions to airgun pulses at distances beyond a few kilometers, even though the airgun pulses remain well above ambient noise levels out to much longer distances (reviewed in Richardson *et al.* 1995; Gordon *et al.* 2004). However, studies done since the late 1990s of migrating humpback and migrating bowhead whales show reactions, including avoidance, that sometimes extend to greater distances than documented earlier. Therefore, it appears that behavioral disturbance can vary greatly depending on context, and not just received levels alone. Avoidance distances often exceed the distances at which boat-based observers can see whales, so observations from the source vessel can be biased. Observations over broader areas may be needed to determine the range of potential effects of some large-source seismic surveys where effects on cetaceans may extend to considerable distances (Richardson *et al.* 1999; Moore and Angliss 2006). Longer-range observations, when required, can sometimes be obtained via systematic aerial surveys or aircraft-based observations of behavior (e.g., Richardson *et al.* 1986, 1999; Miller *et al.* 1999, 2005; Yazvenko *et al.* 2007a, 2007b) or by use of observers on one or more support vessels operating in coordination with the seismic vessel (e.g., Smultea *et al.* 2004; Johnson *et al.* 2007). However, the presence of other vessels near the source vessel can, at least at times, reduce sightability of cetaceans from the source vessel (Beland *et al.* 2009), thus complicating interpretation of sighting data.

Some baleen whales show considerable tolerance of seismic pulses. However, when the pulses are strong enough, avoidance or other behavioral changes become evident. Because the responses become less obvious with diminishing received sound level, it has been difficult to determine the maximum distance (or minimum received sound level) at which reactions to seismic activity become evident and, hence, how many whales are affected.

Studies of gray, bowhead, and humpback whales have determined that received levels of pulses in the 160–170 dB re 1 μPa (rms) range seem to cause obvious avoidance behavior in a substantial fraction of the animals exposed (McCauley *et al.* 1998, 1999, 2000). In many areas, seismic pulses diminish to these levels at distances ranging from 4–15 km from the source. A substantial proportion of the baleen whales within such distances may show avoidance or other strong disturbance reactions to the operating airgun array. Some extreme examples including migrating bowhead whales avoiding considerably larger distances (20–30 km) and lower received sound levels (120–130 dB re 1 μPa (rms)) when exposed to airguns from seismic surveys. Also, even in cases where there is no conspicuous avoidance or change in activity upon exposure to sound pulses from distant seismic operations, there are sometimes subtle changes in behavior (e.g., surfacing–respiration–dive cycles) that are only evident through detailed statistical analysis (e.g., Richardson *et al.* 1986; Gailey *et al.* 2007).

Data on short-term reactions by cetaceans to impulsive noises are not necessarily indicative of long-term or biologically significant effects. It is not known whether impulsive sounds affect reproductive rate or distribution and habitat use in subsequent days or years. However, gray whales have continued to migrate annually along the west coast of North America despite intermittent seismic exploration (and much ship traffic) in that area for decades (Appendix A in Malme *et al.* 1984; Richardson *et al.* 1995), and there has been a substantial increase in the population over recent decades (Allen and Angliss 2010). The western Pacific gray whale population did not seem affected by a seismic survey in its feeding ground during a prior year (Johnson *et al.* 2007). Similarly, bowhead whales have continued to travel to the eastern Beaufort Sea each summer despite seismic exploration in their summer and autumn range for many years (Richardson *et al.* 1987), and their numbers have increased notably (Allen and Angliss 2010). Bowheads also have been observed over periods of days or weeks in areas ensonified repeatedly by seismic pulses (Richardson *et al.* 1987; Harris *et al.* 2007). However, it is generally not known whether the same individual bowheads were involved in these repeated observations (within and between years) in strongly ensonified areas.

*Odontocete:* Relatively little systematic information is available about reactions of toothed whales to airgun pulses. A few studies similar to the more extensive baleen whale/seismic pulse work summarized above have been reported for toothed whales. However, there are recent systematic data on sperm whales (e.g., Gordon *et al.* 2006; Madsen *et al.* 2006; Winsor and Mate 2006; Jochens *et al.* 2008; Miller *et al.* 2009) and beluga whales (e.g., Miller *et al.* 2005). There is also an increasing amount of information about responses of various odontocetes to seismic surveys based on monitoring studies (e.g., Stone 2003; Smultea *et al.* 2004; Moulton and Miller 2005; Holst *et al.* 2006; Stone and Tasker 2006; Potter *et al.* 2007; Hauser *et al.* 2008; Holst and Smultea 2008; Weir 2008; Barkaszi *et al.* 2009; Richardson *et al.* 2009).

Dolphins and porpoises are often seen by observers on active seismic vessels, occasionally at close distances (e.g., bow riding). Marine mammal monitoring data during seismic surveys often show that animal detection rates drop during the firing of seismic airguns, indicating that animals may be avoiding the vicinity of the seismic area (Smultea *et*

*al.* 2004; Holst *et al.* 2006; Hauser *et al.* 2008; Holst and Smultea 2008; Richardson *et al.* 2009). Also, belugas summering in the Canadian Beaufort Sea showed larger-scale avoidance, tending to avoid waters out to 10–20 km from operating seismic vessels (Miller *et al.* 2005). In contrast, recent studies show little evidence of conspicuous reactions by sperm whales to airgun pulses, contrary to earlier indications (e.g., Gordon *et al.* 2006; Stone and Tasker 2006; Winsor and Mate 2006; Jochens *et al.* 2008), except the lower buzz (echolocation signals) rates that were detected during exposure of airgun pulses (Miller *et al.* 2009).

There are almost no specific data on responses of beaked whales to seismic surveys, but it is likely that most if not all species show strong avoidance. There is increasing evidence that some beaked whales may strand after exposure to strong noise from tactical military mid-frequency sonars. Whether they ever do so in response to seismic survey noise is unknown. Northern bottlenose whales seem to continue to call when exposed to pulses from distant seismic vessels.

For delphinids, and possibly the Dall's porpoise, the available data suggest that a ≥170 dB re 1 μPa (rms) disturbance criterion (rather than ≥160 dB) would be appropriate. With a medium-to-large airgun array, received levels typically diminish to 170 dB within 1–4 km, whereas levels typically remain above 160 dB out to 4–15 km (e.g., Tolstoy *et al.* 2009). Reaction distances for delphinids are more consistent with the typical 170 dB re 1 μPa (rms) distances. Stone (2003) and Stone and Tasker (2006) reported that all small odontocetes (including killer whales) observed during seismic surveys in UK waters remained significantly further from the source during periods of shooting on surveys with large volume airgun arrays than during periods without airgun shooting.

Due to their relatively higher frequency hearing ranges when compared to mysticetes, odontocetes may have stronger responses to mid- and high-frequency sources such as sub-bottom profilers, side scan sonar, and echo sounders than mysticetes (Richardson *et al.* 1995; Southall *et al.* 2007).

*Pinnipeds:* Few studies of the reactions of pinnipeds to noise from open-water seismic exploration have been published (for review of the early literature, see Richardson *et al.* 1995). However, pinnipeds have been observed during a number of seismic monitoring studies. Monitoring in the Beaufort Sea during 1996–2002 provided a substantial amount of information on avoidance responses (or lack thereof) and associated behavior. Additional monitoring of that type has been done in the Beaufort and Chukchi Seas in 2006—2009. Pinnipeds exposed to seismic surveys have also been observed during seismic surveys along the U.S. west coast. Also, there are data on the reactions of pinnipeds to various other related types of impulsive sounds.

Early observations provided considerable evidence that pinnipeds are often quite tolerant of strong pulsed sounds. During seismic exploration off Nova Scotia, gray seals exposed to noise from airguns and linear explosive charges reportedly did not react strongly (J. Parsons in Greene *et al.* 1985). An airgun caused an initial startle reaction among South African fur seals but was ineffective in scaring them away from fishing gear. Pinnipeds in both water and air sometimes tolerate strong noise pulses from non-explosive and explosive scaring devices, especially if attracted to the area for feeding or reproduction (Mate and Harvey 1987; Reeves *et al.* 1996). Thus, pinnipeds are expected to be rather tolerant of, or to habituate to, repeated underwater sounds from distant seismic sources, at least when the animals are strongly attracted to the area.

In summary, visual monitoring from seismic vessels has shown only slight (if any) avoidance of airguns by pinnipeds, and only slight (if any) changes in behavior. These studies show that many pinnipeds do not avoid the area within a few hundred meters of an operating airgun array. However, based on the studies with large sample size, or observations from a separate monitoring vessel, or radio telemetry, it is apparent that some phocid seals do show localized avoidance of operating airguns. The limited nature of this tendency for avoidance is a concern. It suggests that one cannot rely on pinnipeds to move away, or to move very far away, before received levels of sound from an approaching seismic survey vessel approach those that may cause hearing impairment.

(2) Masking

Masking occurs when noise and signals (that animal utilizes) overlap at both spectral and temporal scales. Chronic exposure to elevated sound levels could cause masking at particular frequencies for marine mammals, which utilize sound for important biological functions. Masking can interfere with detection of acoustic signals used for orientation, communication, finding prey, and avoiding predators. Marine mammals that experience severe (high intensity and extended duration) acoustic masking could potentially suffer reduced fitness, which could lead to adverse effects on survival and reproduction.

For the airgun noise generated from the proposed marine seismic survey, these are low frequency (under 1 kHz) pulses with extremely short durations (in the scale of milliseconds). Lower frequency man-made noises are more likely to affect detection of communication calls and other potentially important natural sounds such as surf and prey noise. There is little concern regarding masking due to the brief duration of these pulses and relatively longer silence between airgun shots (9–12 seconds) near the noise source, however, at long distances (over tens of kilometers away) in deep water, due to multipath propagation and reverberation, the durations of airgun pulses can be ''stretched'' to seconds with long decays (Madsen *et al.* 2006; Clark and Gagnon 2006). Therefore it could affect communication signals used by low frequency mysticetes when they occur near the noise band and thus reduce the communication space of animals (e.g., Clark *et al.* 2009a, 2009b) and affect their vocal behavior (e.g., Foote *et al.* 2004; Holt *et al.* 2009). Further, in areas of shallow water, multipath propagation of airgun pulses could be more profound, thus affecting communication signals from marine mammals even at close distances. Average ambient noise in areas where received seismic noises are heard can be elevated. At long distances, however, the intensity of the noise is greatly reduced. Nevertheless, partial informational and energetic masking of different degrees could affect signal receiving in some marine mammals within the ensonified areas. Additional research will add to our understanding of these effects.

Although masking effects of pulsed sounds on marine mammal calls and other natural sounds are expected to be limited, there are few specific studies on this. Some whales continue calling in the presence of seismic pulses and whale calls often can be heard between the seismic pulses (e.g., Richardson *et al.* 1986; McDonald *et al.* 1995; Greene *et al.* 1999a, 1999b; Nieukirk *et al.* 2004; Smultea *et al.* 2004; Holst *et al.* 2005a, 2005b, 2006; Dunn and Hernandez 2009).

Among the odontocetes, there has been one report that sperm whales ceased calling when exposed to pulses from a very distant seismic ship (Bowles *et al.* 1994). However, more recent studies of sperm whales found that they continued calling in the presence of

seismic pulses (Madsen *et al.* 2002; Tyack *et al.* 2003; Smultea *et al.* 2004; Holst *et al.* 2006; Jochens *et al.* 2008). Madsen *et al.* (2006) noted that airgun sounds would not be expected to mask sperm whale calls given the intermittent nature of airgun pulses. Dolphins and porpoises are also commonly heard calling while airguns are operating (Gordon *et al.* 2004; Smultea *et al.* 2004; Holst *et al.* 2005a, 2005b; Potter *et al.* 2007). Masking effects of seismic pulses are expected to be negligible in the case of the smaller odontocetes, given the intermittent nature of seismic pulses plus the fact that sounds important to them are predominantly at much higher frequencies than are the dominant components of airgun sounds.

Pinnipeds have best hearing sensitivity and/or produce most of their sounds at frequencies higher than the dominant components of airgun sound, but there is some overlap in the frequencies of the airgun pulses and the calls. However, the intermittent nature of airgun pulses presumably reduces the potential for masking.

Marine mammals are thought to be able to compensate for masking by adjusting their acoustic behavior such as shifting call frequencies, and increasing call volume and vocalization rates, as discussed earlier (e.g., Miller et al. 2000; Parks *et al.* 2007; Di Iorio and Clark 2009; Parks *et al.* 2010); the biological significance of these modifications is still unknown.

(3) Hearing Impairment

Marine mammals exposed to high intensity sound repeatedly or for prolonged periods can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Kastak *et al.* 1999; Schlundt *et al.* 2000; Finneran *et al.* 2002; 2005). TS can be permanent (PTS), in which case the loss of hearing sensitivity is unrecoverable, or temporary (TTS), in which case the animal's hearing threshold will recover over time (Southall *et al.* 2007). Marine mammals that experience TTS or PTS will have reduced sensitivity at the frequency band of the TS, which may affect their capability of communication, orientation, or prey detection. The degree of TS depends on the intensity of the received levels the animal is exposed to, and the frequency at which TS occurs depends on the frequency of the received noise. It has been shown that in most cases, TS occurs at the frequencies approximately one-octave above that of the received noise. Repeated noise exposure that leads to TTS could cause PTS. For transient sounds, the sound level necessary to cause TTS is inversely related to the duration of the sound.

TTS:

TTS is the mildest form of hearing impairment that can occur during exposure to a strong sound (Kryter 1985). While experiencing TTS, the hearing threshold rises and a sound must be stronger in order to be heard. It is a temporary phenomenon, and (especially when mild) is not considered to represent physical damage or ''injury'' (Southall *et al.* 2007). Rather, the onset of TTS is an indicator that, if the animal is exposed to higher levels of that sound, physical damage is ultimately a possibility.

The magnitude of TTS depends on the level and duration of noise exposure, and to some degree on frequency, among other considerations (Kryter 1985; Richardson *et al.* 1995; Southall *et al.* 2007). For sound exposures at or somewhat above the TTS threshold, hearing sensitivity recovers rapidly after exposure to the noise ends. In terrestrial mammals, TTS can last from minutes or hours to (in cases of strong TTS) days. Only a few data have been obtained on sound levels and durations necessary to elicit mild TTS in marine mammals (none in mysticetes), and none of the published data concern TTS elicited by exposure to multiple pulses of sound during operational seismic surveys (Southall *et al.* 2007).

For toothed whales, experiments on a bottlenose dolphin (*Tursiops truncates*) and beluga whale showed that exposure to a single watergun impulse at a received level of 207 kPa (or 30 psi) peak-to-peak (p-p), which is equivalent to 228 dB re 1 μPa (p-p), resulted in a 7 and 6 dB TTS in the beluga whale at 0.4 and 30 kHz, respectively. Thresholds returned to within 2 dB of the pre-exposure level within 4 minutes of the exposure (Finneran *et al.* 2002). No TTS was observed in the bottlenose dolphin.

Finneran *et al.* (2005) further examined the effects of tone duration on TTS in bottlenose dolphins. Bottlenose dolphins were exposed to 3 kHz tones (non-impulsive) for periods of 1, 2, 4 or 8 seconds (s), with hearing tested at 4.5 kHz. For 1-s exposures, TTS occurred with SELs of 197 dB, and for exposures >1 s, SEL >195 dB resulted in TTS (SEL is equivalent to energy flux, in dB re 1 $\mu Pa^2$-s). At an SEL of 195 dB, the mean TTS (4 min after exposure) was 2.8 dB. Finneran *et al.* (2005) suggested that an SEL of 195 dB is the likely threshold for the onset of TTS in dolphins and belugas exposed to tones of durations 1–8 s (i.e., TTS onset occurs at a near-constant SEL, independent of exposure duration). That implies that, at least for non-impulsive tones, a doubling of exposure time results in a 3 dB lower TTS threshold.

However, the assumption that, in marine mammals, the occurrence and magnitude of TTS is a function of cumulative acoustic energy (SEL) is probably an oversimplification. Kastak *et al.* (2005) reported preliminary evidence from pinnipeds that, for prolonged non-impulse noise, higher SELs were required to elicit a given TTS if exposure duration was short than if it was longer, i.e., the results were not fully consistent with an equal-energy model to predict TTS onset. Mooney *et al.* (2009a) showed this in a bottlenose dolphin exposed to octave-band non-impulse noise ranging from 4 to 8 kHz at SPLs of 130 to 178 dB re 1 μPa for periods of 1.88 to 30 minutes (min). Higher SELs were required to induce a given TTS if exposure duration was short than if it was longer. Exposure of the aforementioned bottlenose dolphin to a sequence of brief sonar signals showed that, with those brief (but non-impulse) sounds, the received energy (SEL) necessary to elicit TTS was higher than was the case with exposure to the more prolonged octave-band noise (Mooney *et al.* 2009b). Those authors concluded that, when using (non-impulse) acoustic signals of duration ~0.5 s, SEL must be at least 210–214 dB re 1 $\mu Pa^2$-s to induce TTS in the bottlenose dolphin. The most recent studies conducted by Finneran *et al.* also support the notion that exposure duration has a more significant influence compared to SPL as the duration increases, and that TTS growth data are better represented as functions of SPL and duration rather than SEL alone (Finneran *et al.* 2010a, 2010b). In addition, Finneran *et al.* (2010b) conclude that when animals are exposed to intermittent noises, there is recovery of hearing during the quiet intervals between exposures through the accumulation of TTS across multiple exposures. Such findings suggest that when exposed to multiple seismic pulses, partial hearing recovery also occurs during the seismic pulse intervals.

For baleen whales, there are no data, direct or indirect, on levels or properties of sound that are required to induce TTS. The frequencies to which baleen whales are most sensitive are lower than those to which odontocetes are most sensitive, and natural ambient noise levels at those low frequencies tend to be higher (Urick 1983). As a result, auditory thresholds of baleen whales within their frequency band of best hearing are believed to be higher (less sensitive) than are those of odontocetes

at their best frequencies (Clark and Ellison 2004). From this, it is suspected that received levels causing TTS onset may also be higher in baleen whales. However, no cases of TTS are expected given the small size of the airguns proposed to be used and the strong likelihood that baleen whales (especially migrating bowheads) would avoid the approaching airguns (or vessel) before being exposed to levels high enough for there to be any possibility of TTS.

In pinnipeds, TTS thresholds associated with exposure to brief pulses (single or multiple) of underwater sound have not been measured. Initial evidence from prolonged exposures suggested that some pinnipeds may incur TTS at somewhat lower received levels than do small odontocetes exposed for similar durations (Kastak *et al.* 1999; 2005). However, more recent indications are that TTS onset in the most sensitive pinniped species studied (harbor seal, which is closely related to the ringed seal) may occur at a similar SEL as in odontocetes (Kastak *et al.* 2004).

Most cetaceans show some degree of avoidance of seismic vessels operating an airgun array (see above). It is unlikely that these cetaceans would be exposed to airgun pulses at a sufficiently high level for a sufficiently long period to cause more than mild TTS, given the relative movement of the vessel and the marine mammal. TTS would be more likely in any odontocetes that bow- or wake-ride or otherwise linger near the airguns. However, while bow- or wake-riding, odontocetes would be at the surface and thus not exposed to strong sound pulses given the pressure release and Lloyd Mirror effects at the surface. But if bow- or wake-riding animals were to dive intermittently near airguns, they would be exposed to strong sound pulses, possibly repeatedly.

If some cetaceans did incur mild or moderate TTS through exposure to airgun sounds in this manner, this would very likely be a temporary and reversible phenomenon. However, even a temporary reduction in hearing sensitivity could be deleterious in the event that, during that period of reduced sensitivity, a marine mammal needed its full hearing sensitivity to detect approaching predators, or for some other reason.

Some pinnipeds show avoidance reactions to airguns, but their avoidance reactions are generally not as strong or consistent as those of cetaceans. Pinnipeds occasionally seem to be attracted to operating seismic vessels. There are no specific data on TTS thresholds of pinnipeds exposed to single or multiple low-frequency pulses. However, given the indirect indications of a lower TTS threshold for the harbor seal than for odontocetes exposed to impulse sound (see above), it is possible that some pinnipeds close to a large airgun array could incur TTS.

NMFS currently typically includes mitigation requirements to ensure that cetaceans and pinnipeds are not exposed to pulsed underwater noise at received levels exceeding, respectively, 180 and 190 dB re 1 μPa (rms). The 180/190 dB acoustic criteria were taken from recommendations by an expert panel of the High Energy Seismic Survey (HESS) Team that performed an assessment on noise impacts by seismic airguns to marine mammals in 1997, although the HESS Team recommended a 180-dB limit for pinnipeds in California (HESS 1999). The 180 and 190 dB re 1 μPa (rms) levels have not been considered to be the levels above which TTS might occur. Rather, they were the received levels above which, in the view of a panel of bioacoustics specialists convened by NMFS before TTS measurements for marine mammals started to become available, one could not be certain that there would be no injurious effects, auditory or otherwise, to marine mammals. As summarized above, data that are now available imply that TTS is unlikely to occur in various odontocetes (and probably mysticetes as well) unless they are exposed to a sequence of several airgun pulses stronger than 190 dB re 1 μPa (rms). On the other hand, for the harbor seal, harbor porpoise, and perhaps some other species, TTS may occur upon exposure to one or more airgun pulses whose received level equals the NMFS ''do not exceed'' value of 190 dB re 1 μPa (rms). That criterion corresponds to a single-pulse SEL of 175–180 dB re 1 $\mu Pa^2$-s in typical conditions, whereas TTS is suspected to be possible in harbor seals and harbor porpoises with a cumulative SEL of ~171 and ~164 dB re 1 $\mu Pa^2$-s, respectively.

It has been shown that most large whales and many smaller odontocetes (especially the harbor porpoise) show at least localized avoidance of ships and/or seismic operations. Even when avoidance is limited to the area within a few hundred meters of an airgun array, that should usually be sufficient to avoid TTS based on what is currently known about thresholds for TTS onset in cetaceans. In addition, ramping up airgun arrays, which is standard operational protocol for many seismic operators, may allow cetaceans near the airguns at the time of startup (if the sounds are aversive) to move away from the seismic source and to avoid being exposed to the full acoustic output of the airgun array. Thus, most baleen whales likely will not be exposed to high levels of airgun sounds provided the ramp-up procedure is applied. Likewise, many odontocetes close to the trackline are likely to move away before the sounds from an approaching seismic vessel become sufficiently strong for there to be any potential for TTS or other hearing impairment. Hence, there is little potential for baleen whales or odontocetes that show avoidance of ships or airguns to be close enough to an airgun array to experience TTS. Nevertheless, even if marine mammals were to experience TTS, the magnitude of the TTS is expected to be mild and brief, only in a few decibels for minutes.

PTS:

When PTS occurs, there is physical damage to the sound receptors in the ear. In some cases, there can be total or partial deafness, whereas in other cases, the animal has an impaired ability to hear sounds in specific frequency ranges (Kryter 1985). Physical damage to a mammal's hearing apparatus can occur if it is exposed to sound impulses that have very high peak pressures, especially if they have very short rise times. (Rise time is the interval required for sound pressure to increase from the baseline pressure to peak pressure.)

There is no specific evidence that exposure to pulses of airgun sound can cause PTS in any marine mammal, even with large arrays of airguns. However, given the likelihood that some mammals close to an airgun array might incur at least mild TTS (see above), there has been further speculation about the possibility that some individuals occurring very close to airguns might incur PTS (e.g., Richardson *et al.* 1995; Gedamke *et al.* 2008). Single or occasional occurrences of mild TTS are not indicative of permanent auditory damage, but repeated or (in some cases) single exposures to a level well above that causing TTS onset might elicit PTS.

Relationships between TTS and PTS thresholds have not been widely studied in marine mammals, but are assumed to be similar to those in humans and other terrestrial mammals (Southall *et al.* 2007). Based on data from terrestrial mammals, a precautionary assumption is that the PTS threshold for impulse sounds (such as airgun pulses as received close to the source) is at least 6 dB higher than the TTS threshold on a peak-pressure basis, and probably >6 dB higher (Southall *et al.* 2007). The low-to-moderate levels of TTS that have been induced in captive odontocetes and pinnipeds during controlled studies of TTS have been confirmed to be temporary, with no measurable residual

PTS (Kastak *et al.* 1999; Schlundt *et al.* 2000; Finneran *et al.* 2002; 2005; Nachtigall *et al.* 2003; 2004). However, very prolonged exposure to sound strong enough to elicit TTS, or shorter-term exposure to sound levels well above the TTS threshold, can cause PTS, at least in terrestrial mammals (Kryter 1985). In terrestrial mammals, the received sound level from a single non-impulsive sound exposure must be far above the TTS threshold for any risk of permanent hearing damage (Kryter 1994; Richardson *et al.* 1995; Southall *et al.* 2007). However, there is special concern about strong sounds whose pulses have very rapid rise times. In terrestrial mammals, there are situations when pulses with rapid rise times (e.g., from explosions) can result in PTS even though their peak levels are only a few dB higher than the level causing slight TTS. The rise time of airgun pulses is fast, but not as fast as that of an explosion.

Some factors that contribute to onset of PTS, at least in terrestrial mammals, are as follows:

- Exposure to a single very intense sound,
- fast rise time from baseline to peak pressure,
- repetitive exposure to intense sounds that individually cause TTS but not PTS, and
- recurrent ear infections or (in captive animals) exposure to certain drugs.

Cavanagh (2000) reviewed the thresholds used to define TTS and PTS. Based on this review and SACLANT (1998), it is reasonable to assume that PTS might occur at a received sound level 20 dB or more above that inducing mild TTS. However, for PTS to occur at a received level only 20 dB above the TTS threshold, the animal probably would have to be exposed to a strong sound for an extended period, or to a strong sound with a rather rapid rise time.

More recently, Southall *et al.* (2007) estimated that received levels would need to exceed the TTS threshold by at least 15 dB, on an SEL basis, for there to be risk of PTS. Thus, for cetaceans exposed to a sequence of sound pulses, they estimate that the PTS threshold might be an M-weighted SEL (for the sequence of received pulses) of ~198 dB re 1 μPa $^2$-s. Additional assumptions had to be made to derive a corresponding estimate for pinnipeds, as the only available data on TTS-thresholds in pinnipeds pertained to nonimpulse sound (see above). Southall *et al.* (2007) estimated that the PTS threshold could be a cumulative SEL of ~186 dB re 1 μPa $^2$-s in the case of a harbor seal exposed to impulse sound. The PTS threshold for the California sea lion and northern elephant seal would probably be higher given the higher TTS thresholds in those species. Southall *et al.* (2007) also note that, regardless of the SEL, there is concern about the possibility of PTS if a cetacean or pinniped received one or more pulses with peak pressure exceeding 230 or 218 dB re 1 μPa, respectively. Thus, PTS might be expected upon exposure of cetaceans to either SEL ≥198 dB re 1 μPa $^2$-s or peak pressure ≥230 dB re 1 μPa. Corresponding proposed dual criteria for pinnipeds (at least harbor seals) are ≥186 dB SEL and ≥ 218 dB peak pressure (Southall *et al.* 2007). These estimates are all first approximations, given the limited underlying data, assumptions, species differences, and evidence that the ''equal energy'' model may not be entirely correct.

Sound impulse duration, peak amplitude, rise time, number of pulses, and inter-pulse interval are the main factors thought to determine the onset and extent of PTS. Ketten (1994) has noted that the criteria for differentiating the sound pressure levels that result in PTS (or TTS) are location and species specific. PTS effects may also be influenced strongly by the health of the receiver's ear.

As described above for TTS, in estimating the amount of sound energy required to elicit the onset of TTS (and PTS), it is assumed that the auditory effect of a given cumulative SEL from a series of pulses is the same as if that amount of sound energy were received as a single strong sound. There are no data from marine mammals concerning the occurrence or magnitude of a potential partial recovery effect between pulses. In deriving the estimates of PTS (and TTS) thresholds quoted here, Southall *et al.* (2007) made the precautionary assumption that no recovery would occur between pulses.

It is unlikely that an odontocete would remain close enough to a large airgun array for sufficiently long to incur PTS. There is some concern about bowriding odontocetes, but for animals at or near the surface, auditory effects are reduced by Lloyd's mirror and surface release effects. The presence of the vessel between the airgun array and bow-riding odontocetes could also, in some but probably not all cases, reduce the levels received by bow-riding animals (e.g., Gabriele and Kipple 2009). The TTS (and thus PTS) thresholds of baleen whales are unknown but, as an interim measure, assumed to be no lower than those of odontocetes. Also, baleen whales generally avoid the immediate area around operating seismic vessels, so it is unlikely that a baleen whale could incur PTS from exposure to airgun pulses. The TTS (and thus PTS) thresholds of some pinnipeds (e.g., harbor seal) as well as the harbor porpoise may be lower (Kastak *et al.* 2005; Southall *et al.* 2007; Lucke *et al.* 2009). If so, TTS and potentially PTS may extend to a somewhat greater distance for those animals. Again, Lloyd's mirror and surface release effects will ameliorate the effects for animals at or near the surface.

(4) Non-auditory Physical Effects

Non-auditory physical effects might occur in marine mammals exposed to strong underwater pulsed sound. Possible types of non-auditory physiological effects or injuries that theoretically might occur in mammals close to a strong sound source include neurological effects, bubble formation, and other types of organ or tissue damage. Some marine mammal species (i.e., beaked whales) may be especially susceptible to injury and/or stranding when exposed to intense sounds. However, there is no definitive evidence that any of these effects occur even for marine mammals in close proximity to large arrays of airguns, and beaked whales do not occur in the proposed project area. In addition, marine mammals that show behavioral avoidance of seismic vessels, including most baleen whales, some odontocetes (including belugas), and some pinnipeds, are especially unlikely to incur non-auditory impairment or other physical effects.

Therefore, it is unlikely that such effects would occur during Shell's proposed marine surveys given the brief duration of exposure, the small sound sources, and the planned monitoring and mitigation measures described later in this document.

Additional non-auditory effects include elevated levels of stress response (Wright *et al.* 2007; Wright and Highfill 2007). Although not many studies have been done on noise-induced stress in marine mammals, extrapolation of information regarding stress responses in other species seems applicable because the responses are highly consistent among all species in which they have been examined to date (Wright *et al.* 2007). Therefore, it is reasonable to conclude that noise acts as a stressor to marine mammals. Furthermore, given that marine mammals will likely respond in a manner consistent with other species studied, repeated and prolonged exposures to stressors (including or induced by noise) could potentially be

problematic for marine mammals of all ages. Wright *et al.* (2007) state that a range of issues may arise from an extended stress response including, but not limited to, suppression of reproduction (physiologically and behaviorally), accelerated aging and sickness-like symptoms. However, as mentioned above, Shell's proposed activity is not expected to result in these severe effects due to the nature of the potential sound exposure.

(5) Stranding and Mortality

Marine mammals close to underwater detonations can be killed or severely injured, and the auditory organs are especially susceptible to injury (Ketten *et al.* 1993; Ketten 1995). Airgun pulses are less energetic and their peak amplitudes have slower rise times, while stranding and mortality events would include other energy sources (acoustical or shock wave) far beyond just seismic airguns. To date, there is no evidence that serious injury, death, or stranding by marine mammals can occur from exposure to airgun pulses, even in the case of large airgun arrays.

However, in numerous past IHA notices for seismic surveys, commenters have referenced two stranding events allegedly associated with seismic activities, one off Baja California and a second off Brazil. NMFS has addressed this concern several times, and, without new information, does not believe that this issue warrants further discussion. For information relevant to strandings of marine mammals, readers are encouraged to review NMFS' response to comments on this matter found in 69 FR 74906 (December 14, 2004), 71 FR 43112 (July 31, 2006), 71 FR 50027 (August 24, 2006), and 71 FR 49418 (August 23, 2006).

It should be noted that strandings related to sound exposure have not been recorded for marine mammal species in the Chukchi or Beaufort seas. NMFS notes that in the Beaufort and Chukchi seas, aerial surveys have been conducted by BOEM (previously MMS) and industry during periods of industrial activity (and by BOEM during times with no activity). No strandings or marine mammals in distress have been observed during these surveys and none have been reported by North Slope Borough inhabitants. In addition, there are very few instances that seismic surveys in general have been linked to marine mammal strandings, other than those mentioned above. As a result, NMFS does not expect any marine mammals will incur serious injury or mortality in the Arctic Ocean or strand as a result of the proposed marine survey.

*Potential Effects of Sonar Signals*

A variety of active acoustic instrumentation would be used during Shell's proposed marine surveys program. Source characteristics and propagation distances to 160 (rms) dB re 1 μPa by comparable instruments are listed in Table 2. In general, the potential effects of this equipment on marine mammals are similar to those from the airgun, except the magnitude of the impacts is expected to be much less due to the lower intensity and higher frequencies. In some cases, due to the fact that the operating frequencies of some of this equipment (e.g., Multi-beam bathymetric sonar: frequency at 220–240 kHz) are above the hearing ranges of marine mammals, they are not expected to have any impacts to marine mammals.

*Vessel Sounds*

In addition to the noise generated from seismic airguns and active sonar systems, various types of vessels will be used in the operations, including source vessel and vessels used for equipment recovery and maintenance and logistic support. Sounds from boats and vessels have been reported extensively (Greene and Moore 1995; Blackwell and Greene 2002; 2005; 2006). Numerous measurements of underwater vessel sound have been performed in support of recent industry activity in the Chukchi and Beaufort Seas. Results of these measurements were reported in various 90-day and comprehensive reports since 2007 (e.g., Aerts *et al.* 2008; Hauser *et al.* 2008; Brueggeman 2009; Ireland *et al.* 2009; O'Neill and McCrodan 2011; Chorney *et al.* 2011; McPherson and Warner 2012). For example, Garner and Hannay (2009) estimated sound pressure levels of 100 dB at distances ranging from approximately 1.5 to 2.3 mi (2.4 to 3.7 km) from various types of barges. MacDonald *et al.* (2008) estimated higher underwater SPLs from the seismic vessel *Gilavar* of 120 dB at approximately 13 mi (21 km) from the source, although the sound level was only 150 dB at 85 ft (26 m) from the vessel. Compared to airgun pulses, underwater sound from vessels is generally at relatively low frequencies. However, noise from the vessel during equipment recovery and maintenance while operating the DP system using thrusters as well as the primary propeller(s) could produce noise levels higher than during normal operation of the vessel. Measurements of a vessel in DP mode with an active bow thruster were made in the Chukchi Sea in 2010 (Chorney *et al.* 2011). The resulting source level estimate was 175.9 dB (rms) re 1 μPa-m. Acoustic measurements of the Nordica in DP mode while supporting Shell's 2012 drilling operation in the Chukchi Sea showed that the 120 dB re 1 μ Pa radius was at approximately 4 km (2.5 mi) (Bisson *et al.* 2013).

The primary sources of sounds from all vessel classes are propeller cavitation, propeller singing, and propulsion or other machinery. Propeller cavitation is usually the dominant noise source for vessels (Ross 1976). Propeller cavitation and singing are produced outside the hull, whereas propulsion or other machinery noise originates inside the hull. There are additional sounds produced by vessel activity, such as pumps, generators, flow noise from water passing over the hull, and bubbles breaking in the wake. Source levels from various vessels would be empirically measured before the start of marine surveys, and during equipment recovery and maintenance while operating the DP system.

**Anticipated Effects on Habitat**

The primary potential impacts to marine mammals and other marine species are associated with elevated sound levels produced by airguns and vessels operating in the area. However, other potential impacts to the surrounding habitat from physical disturbance are also possible.

With regard to fish as a prey source for cetaceans and pinnipeds, fish are known to hear and react to sounds and to use sound to communicate (Tavolga *et al.* 1981) and possibly avoid predators (Wilson and Dill 2002). Experiments have shown that fish can sense both the strength and direction of sound (Hawkins 1981). Primary factors determining whether a fish can sense a sound signal, and potentially react to it, are the frequency of the signal and the strength of the signal in relation to the natural background noise level.

The level of sound at which a fish will react or alter its behavior is usually well above the detection level. Fish have been found to react to sounds when the sound level increased to about 20 dB above the detection level of 120 dB (Ona 1988); however, the response threshold can depend on the time of year and the fish's physiological condition (Engas *et al.* 1993). In general, fish react more strongly to pulses of sound rather than non-pulse signals (such as noise from vessels) (Blaxter *et al.* 1981), and a quicker alarm response is elicited when the sound signal intensity rises rapidly compared to sound rising more slowly to the same level.

Investigations of fish behavior in relation to vessel noise (Olsen *et al.* 1983; Ona 1988; Ona and Godo 1990) have shown that fish react when the sound from the engines and propeller exceeds a certain level. Avoidance reactions have been observed in fish such as cod and herring when vessels approached close enough that received sound levels are 110 dB to 130 dB (Nakken 1992; Olsen 1979; Ona and Godo 1990; Ona and Toresen 1988). However, other researchers have found that fish such as polar cod, herring, and capeline are often attracted to vessels (apparently by the noise) and swim toward the vessel (Rostad *et al.* 2006). Typical sound source levels of vessel noise in the audible range for fish are 150 dB to 170 dB (Richardson *et al.* 1995).

Further, during the seismic survey only a small fraction of the available habitat would be ensonified at any given time. Disturbance to fish species would be short-term and fish would return to their pre-disturbance behavior once the seismic activity ceases (McCauley *et al.* 2000a, 2000b; Santulli *et al.* 1999; Pearson *et al.* 1992). Thus, the proposed survey would have little, if any, impact on the abilities of marine mammals to feed in the area where seismic work is planned.

Some mysticetes, including bowhead whales, feed on concentrations of zooplankton. Some feeding bowhead whales may occur in the Alaskan Beaufort Sea in July and August, and others feed intermittently during their westward migration in September and October (Richardson and Thomson [eds.] 2002; Lowry *et al.* 2004). A reaction by zooplankton to a seismic impulse would only be relevant to whales if it caused concentrations of zooplankton to scatter. Pressure changes of sufficient magnitude to cause that type of reaction would probably occur only very close to the source. Impacts on zooplankton behavior are predicted to be negligible, and that would translate into negligible impacts on feeding mysticetes. Thus, the proposed activity is not expected to have any habitat-related effects on prey species that could cause significant or long-term consequences for individual marine mammals or their populations.

**Potential Impacts on Availability of Affected Species or Stock for Taking for Subsistence Uses**

Subsistence hunting is an essential aspect of Inupiat Native life, especially in rural coastal villages. The Inupiat participate in subsistence hunting activities in and around the Chukchi Sea. The animals taken for subsistence provide a significant portion of the food that will last the community through the year. Marine mammals represent on the order of 60–80% of the total subsistence harvest. Along with the nourishment necessary for survival, the subsistence activities strengthen bonds within the culture, provide a means for educating the young, provide supplies for artistic expression, and allow for important celebratory events.

The communities closest to the project area are the villages of Wainwright and Barrow. Shell's proposed ice gouge surveys would occur offshore Wainwright but would be approximately 30 km from Barrow and 48 km from Point Lay. The closest point for Shell's proposed site clearance and shallow hazards surveys and equipment recovery and maintenance activities would be approximately 120 km to Wainwright and 150 km to Point Lay, and much farther away to Barrow.

*Potential Impacts to Subsistence Uses*

NMFS has defined ''unmitigable adverse impact'' in 50 CFR 216.103 as: ''…an impact resulting from the specified activity: (1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (i) Causing the marine mammals to abandon or avoid hunting areas; (ii) Directly displacing subsistence users; or (iii) Placing physical barriers between the marine mammals and the subsistence hunters; and (2) That cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.''

(1) Bowhead Whales

Shell's planned surveys would have no or negligible effects on bowhead whale harvest activities. Noise and general activity associated with marine surveys and operation of vessels has the potential to harass bowhead whales. However, though temporary diversions of the swim path of migrating whales have been documented, the whales have generally been observed to resume their initial migratory route. The proposed open-water marine surveys and vessel noise could in some circumstances affect subsistence hunts by placing the animals further offshore or otherwise at a greater distance from villages thereby increasing the difficulty of the hunt or retrieval of the harvest, or creating a safety risk to the whalers. Residents of Barrow hunt bowheads during the spring and fall migration. Although bowhead hunts by residents of Wainwright, Point Lay and Point Hope used to take place mostly in the spring and were typically curtailed when ice begins to break up, the Chukchi Sea communities increasingly are being forced to look to fall hunting opportunities as ice conditions in the spring are making it more dangerous and difficult to meet the quotas. From 1974 through 2009, bowhead harvests by these Chukchi Sea villages occurred only in the spring between early April and mid-June (Suydam and George, 2012). A Wainwright whaling crew harvested the first fall bowhead in 90 years or more on October 8, 2010, and again in October of 2011. Fall whaling by Chukchi Sea villages may occur in the future, particularly if bowhead quotas are not completely filled during the spring hunt, and fall weather is accommodating.

During the survey period most marine mammals are expected to be dispersed throughout the area, except during the peak of the bowhead whale migration through the Chukchi Seas, which occurs from late August into October. Bowhead whales are expected to be in the Canadian Beaufort Sea during much of the time, and therefore are not expected to be affected by the proposed marine surveys and vessel noise prior to the start of the fall subsistence hunt. After the conclusion of the subsistence hunt, bowheads may travel in proximity to the survey area and hear sounds from sonar, high resolution profilers, and associated vessel sounds; and may be displaced by these activities.

(2) Beluga Whales

Belugas typically do not represent a large proportion of the subsistence harvests by weight in the communities of Wainwright and Barrow, the nearest communities to Shell's planned 2013 activities in the Chukchi Sea. Barrow residents hunt beluga in the spring normally after the bowhead hunt) in leads between Point Barrow and Skull Cliffs in the Chukchi Sea primarily in April-June, and later in the summer (July-August) on both sides of the barrier island in Elson Lagoon/Beaufort Sea (MMS 2008), but harvest rates indicate the hunts are not frequent. Wainwright residents hunt beluga in April-June in the spring lead system, but this hunt typically occurs only if there are no bowheads in the area. Communal hunts for beluga are conducted along the coastal lagoon system later in July-August.

Belugas typically represent a much greater proportion of the subsistence harvest in Point Lay and Point Hope. Point Lay's primary beluga hunt occurs from mid-June through mid-July, but can sometimes continue into August if early success is not sufficient. Point Hope residents hunt beluga primarily in

the lead system during the spring (late March to early June) bowhead hunt, but also in open water along the coastline in July and August. Belugas are harvested in coastal waters near these villages, generally within a few miles from shore. The southern extent of Shell's proposed surveys is Icy Cape which lies over 30 miles (48 km) to the north of Point Lay, and therefore NMFS considers that the surveys would have no or negligible effect on beluga hunts.

The survey vessel may be resupplied via another vessel from onshore support facilities and may traverse areas that are sometimes used for subsistence hunting of belugas. Disturbance associated with vessel and potential aircraft traffic could therefore potentially affect beluga hunts. However, all of the beluga hunt by Barrow residents in the Chukchi Sea, and much of the hunt by Wainwright residents would likely be completed before Shell activities would commence.

(3) Seals

Seals are an important subsistence resource and ringed seals make up the bulk of the seal harvest. Most ringed and bearded seals are harvested in the winter or in the spring before Shell's 2013 activities would commence, but some harvest continues during open water and could possibly be affected by Shell's planned activities. Spotted seals are also harvested during the summer. Most seals are harvested in coastal waters, with available maps of recent and past subsistence use areas indicating seal harvests have occurred only within 30–40 mi (48–64 km) off the coastline. Shells planned offshore surveys, equipment recovery and maintenance would occur outside state waters and are not likely to have an impact on subsistence hunting for seals. Resupply vessel and air traffic between land and the operations vessels could potentially disturb seals and, therefore, subsistence hunts for seals, but any such effects would be minor due to the small number of supporting vessels and the fact that most seal hunting is done during the winter and spring.

As stated earlier, the proposed seismic survey would take place between July and October. The closest extension of the proposed site clearance and shallow hazards surveys located approximately 120 km to Wainwright and 150 km to Point Lay, and much farther to Barrow. Potential impact from the planned activities is expected mainly from sounds generated by the vessel and during active airgun deployment. Due to the timing of the project and the distance from the surrounding communities, it is anticipated to have no effects on spring harvesting and little or no effects on the occasional summer harvest of beluga whale, subsistence seal hunts (ringed and spotted seals are primarily harvested in winter while bearded seals are hunted during July—September in the Beaufort Sea), or the fall bowhead hunt.

In addition, Shell has developed and proposes to implement a number of mitigation measures which include a proposed Marine Mammal Monitoring and Mitigation Plan (4MP), employment of subsistence advisors in the villages, and implementation of a Communications Plan (with operation of Communication Centers). Shell has prepared a Plan of Cooperation (POC) under 50 CFR 216.104 Article 12 of the MMPA to address potential impacts on subsistent seal hunting activities. Shell met with the Alaska Eskimo Whaling Commission (AEWC) and communities' Whaling Captains' Associations as part of the POC development, to establish avoidance guidelines and other mitigation measures to be followed where the proposed activities may have an impact on subsistence.

Finally, to ensure that there will be no conflict from Shell's proposed open-water marine surveys and equipment recovery and maintenance to subsistence activities, Shell signed a Conflict Avoidance Agreement with the local subsistence communities. The CAA identifies what measures have been or will be taken to minimize adverse impacts of the planned activities on subsistence harvesting.

**Mitigation Measures**

In order to issue an incidental take authorization under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses.

For the Shell open-water marine surveys and equipment recovery and maintenance activities in the Chukchi Sea, NMFS is requiring Shell to implement the following mitigation measures to minimize the potential impacts to marine mammals in the project vicinity as a result of its survey activities. The primary purpose of these mitigation measures is to detect marine mammals within, or about to enter designated exclusion zones and to initiate immediate shutdown or power down of the airgun(s).

(1) Establishing Exclusion and Disturbance Zones

Under current NMFS guidelines, the ''exclusion zone'' for marine mammal exposure to impulse sources is customarily defined as the area within which received sound levels are ≥180 dB (rms) re 1 μPa for cetaceans and ≥190 dB (rms) re 1 μPa for pinnipeds. These safety criteria are based on an assumption that SPL received at levels lower than these will not injure these animals or impair their hearing abilities, but that at higher levels might have some such effects. Disturbance or behavioral effects to marine mammals from underwater sound may occur after exposure to sound at distances greater than the exclusion zones (Richarcdson *et al.* 1995). Currently, NMFS uses 160 dB (rms) re 1 μPa as the threshold for Level B behavioral harassment from impulses noise, and 120 dB (rms) re 1 μPa for Level B behavioral harassment from non-impulse noise.

Exclusion and disturbance radii for the sound levels produced by the 40 in$^3$ array and the single mitigation airgun (10 cubic inches) to be used during the 2013 site clearance and shallow hazards survey activities were measured at the Honeyguide and Burger prospect areas a total of three separate times between 2008 and 2009. The largest radii from these measurements will be implemented at the commencement of 2013 airgun operations to establish marine mammal exclusion zones used for mitigation (Table 3). Shell will conduct sound source measurements of the airgun array at the beginning of survey operations in 2013 to verify the size of the various marine mammal exclusion zones (see above). The acoustic data will be analyzed as quickly as reasonably practicable in the field and used to verify and adjust the marine mammal exclusion zone distances. The mitigation measures to be implemented at the 190 and 180 dB (rms) sound levels will include power downs and shut downs as described below.

TABLE 3—DISTANCES OF THE 190 AND 180 dB (rms) RE 1 μPa ISOLPETHS (IN M) TO BE USED FOR MITIGATION PURPOSES AT THE BEGINNING OF 2013 AIRGUN OPERATIONS IN THE CHUKCHI SEAL UNTIL SSV RESULTS ARE AVAILABLE.

| Received levels (dB re 1 μPa rms) | 4-Airgun array (40 in$^3$) | Single airgun (10 in$^3$) |
|---|---|---|
| 190 | 50 | 23 |
| 180 | 160 | 52 |

(2) Vessel and Helicopter Related Mitigation Measures,

This mitigation measure applies to all vessels that are part of the Chukchi Sea marine surveys and equipment recovery and maintenance activities, including crew transfer vessels.

- Avoid concentrations or groups of whales by all vessels under the direction of Shell. Operators of support vessels should, at all times, conduct their activities at the maximum distance possible from such concentrations of whales.
- Vessels in transit shall be operated at speeds necessary to ensure no physical contact with whales occurs. If any vessel approaches within 1.6 km (1 mi) of observed bowhead whales, except when providing emergency assistance to whalers or in other emergency situations, the vessel operator will take reasonable precautions to avoid potential interaction with the bowhead whales by taking one or more of the following actions, as appropriate:
  - Reducing vessel speed to less than 5 knots within 300 yards (900 feet or 274 m) of the whale(s);
  - Steering around the whale(s) if possible;
  - Operating the vessel(s) in such a way as to avoid separating members of a group of whales from other members of the group;
  - Operating the vessel(s) to avoid causing a whale to make multiple changes in direction; and
  - Checking the waters immediately adjacent to the vessel(s) to ensure that no whales will be injured when the propellers are engaged.
- When weather conditions require, such as when visibility drops, adjust vessel speed accordingly to avoid the likelihood of injury to whales.
- In the event that any aircraft (such as helicopters) are used to support the planned survey, the mitigation measures below would apply:
  - Under no circumstances, other than an emergency, shall aircraft be operated at an altitude lower than 1,000 feet above sea level (ASL) when within 0.3 mile (0.5 km) of groups of whales.
  - Helicopters shall not hover or circle above or within 0.3 mile (0.5 km) of groups of whales.

(3) Mitigation Measures for Airgun Operations

The primary role for airgun mitigation during the site clearance and shallow hazards surveys is to monitor marine mammals near the airgun array during all daylight airgun operations and during any nighttime start-up of the airguns. During the site clearance and shallow hazards surveys PSOs will monitor the pre-established exclusion zones for the presence of marine mammals. When marine mammals are observed within, or about to enter, designated exclusion zones, PSOs have the authority to call for immediate power down (or shutdown) of airgun operations as required by the situation. A summary of the procedures associated with each mitigation measure is provided below.

*Ramp Up Procedure*

A ramp up of an airgun array provides a gradual increase in sound levels, and involves a step-wise increase in the number and total volume of airguns firing until the full volume is achieved. The purpose of a ramp up (or ''soft start'') is to ''warn'' cetaceans and pinnipeds in the vicinity of the airguns and to provide time for them to leave the area and thus avoid any potential injury or impairment of their hearing abilities.

During the shallow hazards survey program, the seismic operator will ramp up the airgun arrays slowly. Full ramp ups (i.e., from a cold start after a shut down, when no airguns have been firing) will begin by firing a single airgun in the array (i.e., the mitigation airgun). A full ramp up, after a shut down, will not begin until there has been a minimum of 30 min of observation of the exclusion zone by PSOs to assure that no marine mammals are present. The entire exclusion zone must be visible during the 30-minute lead-in to a full ramp up. If the entire exclusion zone is not visible, then ramp up from a cold start cannot begin. If a marine mammal(s) is sighted within the exclusion zone during the 30-minute watch prior to ramp up, ramp up will be delayed until the marine mammal(s) is sighted outside of the exclusion zone or the animal(s) is not sighted for at least 15–30 minutes: 15 minutes for small odontocetes (harbor porpoise) and pinnipeds, or 30 minutes for baleen whales and large odontocetes (including beluga and killer whales and narwhal).

*Use of a Small-Volume Airgun During Turns and Transits*

Throughout the seismic survey, particularly during turning movements, and short transits, Shell will employ the use of a small-volume airgun (i.e., 10 in$^3$ ''mitigation airgun'') to deter marine mammals from being within the immediate area of the seismic operations. The mitigation airgun would be operated at approximately one shot per minute and would not be operated for longer than three hours in duration (turns may last two to three hours for the proposed project).

During turns or brief transits (e.g., less than three hours) between seismic tracklines, one mitigation airgun will continue operating. The ramp-up procedure will still be followed when increasing the source levels from one airgun to the full airgun array. However, keeping one airgun firing will avoid the prohibition of a ''cold start'' during darkness or other periods of poor visibility. Through use of this approach, site clearance and shallow hazards surveys using the full array may resume without the 30 minute observation period of the full exclusion zone required for a ''cold start''. PSOs will be on duty whenever the airguns are firing during daylight, during the 30 minute periods prior to ramp-ups.

*Power-Down and Shut Down Procedures*

A power down is the immediate reduction in the number of operating energy sources from all firing to some smaller number (e.g., single mitigation airgun). A shut down is the immediate cessation of firing of all energy sources. The array will be immediately powered down whenever a marine mammal is sighted approaching close to or within the applicable exclusion zone of the full array, but is outside the applicable exclusion zone of the single mitigation source. If a marine mammal is sighted within or about to enter the applicable

exclusion zone of the single mitigation airgun, the entire array will be shut down (i.e., no sources firing).

In addition, site clearance and shallow hazard surveys will not commence or will shut down if an aggregation of 12 or more bowhead whales or gray whales that appear to be engaged in a non-migratory, significant biological behavior (e.g., feeding, socializing) are observed during vessel monitoring within the 160-dB zone of disturbance.

*Poor Visibility Conditions*

Shell plans to conduct 24-hour operations. PSOs will not be on duty during ongoing seismic operations during darkness, given the very limited effectiveness of visual observation at night (there will be no periods of darkness in the survey area until mid-August). The provisions associated with operations at night or in periods of poor visibility include the following:

- If during foggy conditions, heavy snow or rain, or darkness (which may be encountered starting in late August), the full 180 dB exclusion zone is not visible, the airguns cannot commence a ramp-up procedure from a full shut-down.
- If one or more airguns have been operational before nightfall or before the onset of poor visibility conditions, they can remain operational throughout the night or poor visibility conditions. In this case ramp-up procedures can be initiated, even though the exclusion zone may not be visible, on the assumption that marine mammals will be alerted by the sounds from the single airgun and have moved away.

(4) Mitigation Measures for Subsistence Activities

Regulations at 50 CFR 216.104(a)(12) require IHA applicants for activities that take place in Arctic waters to provide a Plan of Cooperation (POC) or information that identifies what measures have been taken and/or will be taken to minimize adverse effects on the availability of marine mammals for subsistence purposes.

Shell has prepared a POC, which relies upon the Chukchi Sea Communication Plans to identify the measures that Shell has developed in consultation with North Slope subsistence communities and will implement during its planned 2013 activities to minimize any adverse effects on the availability of marine mammals for subsistence uses. In addition, the POC provides detailed Shell's communications and consultations with local subsistence communities concerning its planned 2013 program, potential conflicts with subsistence activities, and means of resolving any such conflicts.

The POC is the result of numerous meetings and consultations between Shell, affected subsistence communities and stakeholders, and federal agencies. The POC identifies and documents potential conflicts and associated measures that will be taken to minimize any adverse effects on the availability of marine mammals for subsistence use. Outcomes of POC meetings are typically included in updates attached to the POC as addenda and distributed to federal, state, and local agencies as well as local stakeholder groups that either adjudicate or influence mitigation approaches for Shell's open-water programs.

Meetings for Shell's 2013 drilling and open-water marine surveys programs in the Beaufort and Chukchi Seas occurred in Kaktovik, Nuiqsut Barrow, Wainwright, and Point Lay, during October of 2012. Shell met with the marine mammal commissions and committees including the Alaska Eskimo Whaling Commission (AEWC), Eskimo Walrus Commission (EWC), Alaska Beluga Whale Committee (ABWC), Alaska Ice Seal Committee (AISC), and the Alaska Nanuuq Commission (ANC) on December 17 and 18, 2012 in a co-management meeting. In March 2013, Shell revised its 2013 program to suspend plans for drilling, delete the proposed geotechnical program entirely, and remove survey activities from the Beaufort Sea. As a result, Shell has revised the proposed open-water marine surveys program for 2013, thereby necessitating the additional community meetings that were held this spring in Chukchi Sea villages to present changes to the 2013 season. Shell conducted these POC meetings in Chukchi Sea villages May 20–29, 2013. Shell submitted a final POC to NMFS on June 17, 2013.

Following the 2013 season, Shell intends to have a post-season co-management meeting with the commissioners and committee heads to discuss results of mitigation measures and outcomes of the preceding season. The goal of the post-season meeting is to build upon the knowledge base, discuss successful or unsuccessful outcomes of mitigation measures, and possibly refine plans or mitigation measures if necessary.

In addition, Shell signed the 2013 Conflict Avoidance Agreement (CAA) with the Alaska subsistence whaling communities to ensure no unmitigable impacts to subsistence whaling from its proposed open-water marine survey activities in the Chukchi Sea.

*Mitigation Conclusions*

NMFS has carefully evaluated these mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and
- the practicability of the measure for applicant implementation.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has determined that the mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

**Monitoring and Reporting Measures**

In order to issue an ITA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking''. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for ITAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area.

*I. Monitoring Measures*

Monitoring will provide information on the numbers of marine mammals potentially affected by the exploration operations and facilitate real time mitigation to prevent injury of marine mammals by industrial sounds or activities. These goals will be accomplished in the Chukchi Sea during 2013 by conducting vessel-based monitoring from all ships with sound sources and an acoustic monitoring program to document underwater sounds and the vocalizations of marine mammals in the region. The following monitoring measures are required for Shell's 2013 open-water marine surveys in the Chukchi Sea.

Visual monitoring by Protected Species Observers (PSOs) during active marine survey operations, and periods when these surveys are not occurring, will provide information on the numbers of marine mammals potentially affected by these activities and facilitate real time mitigation to prevent impacts to marine mammals by industrial sounds or operations. Vessel-based PSOs onboard the survey vessel will record the numbers and species of marine mammals observed in the area and any observable reaction of marine mammals to the survey activities in the Chukchi Sea. Additionally, monitoring by PSOs aboard the vessel utilized for equipment recovery and maintenance activities at the Burger A well site will ensure that there are no interactions between marine mammals and these operations. PSOs aboard the vessel will monitor adjacent areas while the vessel operates from a stationary position in DP mode.

The acoustics monitoring program will characterize the sounds produced by marine surveys and will document the potential reactions of marine mammals in the area to those sounds and activities. Recordings of ambient sound levels and vocalizations of marine mammals along the Chukchi Sea coast and offshore will also be used to interpret potential impacts to marine mammals around the marine survey and equipment recovery and maintenance activity, in addition to subsistence use areas closer to shore. Although these monitoring programs were designed primarily to understand the impacts of exploratory drilling in the Chukchi Sea they will also provide valuable information about the potential impacts of the 2013 marine surveys on marine mammals in the area.

*Visual-Based Protected Species Observers (PSOs)*

The visual-based marine mammal monitoring will be implemented by a team of experienced PSOs, including both biologists and Inupiat personnel. PSOs will be stationed aboard the marine survey vessel and the vessel used to facilitate equipment recovery and maintenance work at the Burger A exploratory well site through the duration of the projects. The vessel-based marine mammal monitoring will provide the basis for real-time mitigation measures as discussed in the Mitigation Measures section. In addition, monitoring results of the vessel-based monitoring program will include the estimation of the number of ''takes'' as stipulated in the IHA.

(1) Protected Species Observers

Vessel-based monitoring for marine mammals will be done by trained PSOs throughout the period of survey activities. The observers will monitor the occurrence of marine mammals near the survey vessel during all daylight periods during operation, and during most daylight periods when operations are not occurring. PSO duties will include watching for and identifying marine mammals; recording their numbers, distances, and reactions to the survey operations; and documenting ''take by harassment''.

A sufficient number of PSOs will be required onboard the survey vessel to meet the following criteria:

- 100% monitoring coverage during all periods of survey operations in daylight;
- maximum of 4 consecutive hours on watch per PSO; and
- maximum of ~12 hours of watch time per day per PSO.

PSO teams will consist of Inupiat observers and experienced field biologists. An experienced field crew leader will supervise the PSO team onboard the survey vessel. The total number of PSOs may decrease later in the season as the duration of daylight decreases.

(2) Observer Qualifications and Training

Crew leaders and most PSOs will be individuals with experience as observers during recent seismic, site clearance and shallow hazards, and other monitoring projects in Alaska or other offshore areas in recent years.

Biologist-observers will have previous marine mammal observation experience, and field crew leaders will be highly experienced with previous vessel-based marine mammal monitoring and mitigation projects. Resumes for those individuals will be provided to NMFS for review and acceptance of their qualifications. Inupiat observers will be experienced in the region and familiar with the marine mammals of the area. All observers will complete a NMFS-approved observer training course designed to familiarize individuals with monitoring and data collection procedures. A marine mammal observers' handbook, adapted for the specifics of the planned survey program will be prepared and distributed beforehand to all PSOs (see below).

PSOs will complete a two or three-day training and refresher session on marine mammal monitoring, to be conducted shortly before the anticipated start of the 2013 open-water season. Any exceptions will have or receive equivalent experience or training. The training session(s) will be conducted by qualified marine mammalogists with extensive crew-leader experience during previous vessel-based seismic monitoring programs.

(3) PSO Handbook

A PSO's Handbook will be prepared for Shell's 2013 vessel-based monitoring program. Handbooks contain maps, illustrations, and photographs, as well as text, and are intended to provide guidance and reference information to trained individuals who will participate as PSOs. The following topics will be covered in the PSO Handbook for the Shell project:

- Summary overview descriptions of the project, marine mammals and underwater noise, the marine mammal monitoring program (vessel roles, responsibilities), and the Marine Mammal Protection Act;
- Monitoring and mitigation objectives and procedures, including radii for exclusion zones;
- Responsibilities of staff and crew regarding the marine mammal monitoring plan;
- Instructions for ship crew regarding the marine mammal monitoring plan;
- Data recording procedures: codes and coding instructions, PSO coding mistakes, electronic database; navigational, marine physical, field data sheet;
- List of species that might be encountered: identification, natural history;
- Use of specialized field equipment (reticle binoculars, NVDs, etc.);
- Reticle binocular distance scale;
- Table of wind speed, Beaufort wind force, and sea state codes; and
- Data quality-assurance/quality-control, delivery, storage, and backup procedures.

*Marine Mammal Observer Protocol*

The PSOs will watch for marine mammals from the best available vantage point on the survey vessels, typically the bridge. The PSOs will scan systematically with the unaided eye and 7 x 50 reticle binoculars, supplemented with 20 x 60 image-stabilized Zeiss Binoculars or Fujinon 25 x 150 ''Big-eye'' binoculars, and night-vision equipment when needed. Personnel on the bridge will assist the marine mammal observer(s) in watching for marine mammals.

PSOs aboard the stationary vessel used to conduct equipment recovery and maintenance activity will focus their attention on areas immediately adjacent to the vessel and where active operations are occurring to ensure these areas are clear of marine mammals and

that there are no direct interactions between animals and equipment or project personnel. The observer(s) aboard the marine survey vessel will give particular attention to the areas within the marine mammal exclusion zones around the source vessel. These zones are the maximum distances within which received levels may exceed 180 dB (rms) re 1 μPa (rms) for cetaceans, or 190 dB (rms) re 1 μPa for other marine mammals. Information to be recorded by PSOs will include the same types of information that were recorded during recent monitoring programs associated with Industry activity in the Arctic (e.g., Ireland *et al.* 2009; Reiser *et al.* 2010, 2011). When a mammal sighting is made, the following information about the sighting will be recorded:

- Species, group size, age/size/sex categories, behavior when first sighted and after initial sighting, heading, bearing and distance from observer, apparent reaction to activities (e.g., none, avoidance, approach, paralleling, etc.), closest point of approach, and pace.
- Time, location, speed, and activity of the vessel, sea state, ice cover, visibility, and sun glare.
- The positions of other vessel(s) in the vicinity of the observer location.

Distances to nearby marine mammals will be estimated with binoculars (Fujinon 7 x 50 binoculars) containing a reticle to measure the vertical angle of the line of sight to the animal relative to the horizon. Observers may use a laser rangefinder to test and improve their abilities for visually estimating distances to objects in the water.

When a marine mammal is seen approaching or within the exclusion zone applicable to that species, the marine survey crew will be notified immediately so that mitigation measures called for in the applicable authorization(s) can be implemented.

Night-vision equipment (Generation 3 binocular image intensifiers or equivalent units) will be available for use when/if needed. Past experience with night-vision devices (NVDs) in the Chukchi Sea and elsewhere has indicated that NVDs are not nearly as effective as visual observation during daylight hours (e.g., Harris et al. 1997, 1998; Moulton and Lawson 2002).

*Field Data-Recording, Verification, Handling, and Security*

PSOs will record their observations directly into computers running a custom designed software package. Paper datasheets will be available as backup if necessary. The accuracy of the data entry will be verified in the field by computerized validity checks as the data are entered, and by subsequent manual checking of the database printouts. These procedures will allow initial summaries of data to be prepared during and shortly after the field season, and will facilitate transfer of the data to statistical, graphical or other programs for further processing. Quality control of the data will be facilitated by (1) the start-of-season training session, (2) subsequent supervision by the onboard field crew leader, and (3) ongoing data checks during the field season.

The data will be sent off of the ship to Anchorage each day (if possible) and backed up regularly onto CDs and/or USB disks, and stored at separate locations on the vessel. If possible, data sheets will be photocopied daily during the field season. Data will be secured further by having data sheets and backup data CDs carried back to the Anchorage office during crew rotations.

*Passive Acoustic Monitoring*

(1) Sound Source Measurements

The objectives of the sound source measurements planned for 2013 will be (1) to measure the distances at which broadband received levels reach 190, 180, 170, 160, and 120 dB (rms) re 1 μPa during marine surveys and equipment recovery and maintenance activity at the Burger A exploratory well site, and from vessels used during these activities. The measurements of airguns and other marine survey equipment will be made by an acoustics contractor at the beginning of the surveys. Data from survey equipment will be previewed in the field immediately after download from the hydrophone instruments. An initial sound source analysis will be supplied to NMFS and the vessel within 120 hours of completion of the measurements, if possible. The report will indicate the distances to sound levels based on fits of empirical transmission loss formulae to data in the endfire and broadside directions. A more detailed report will be provided to NMFS as part of the 90-day report following completion of the acoustic program.

(2) Long-Term Acoustic Monitoring

Acoustic studies that were undertaken from 2006 through 2012 in the Chukchi Sea as part of the Joint Monitoring Program will be continued by Shell during its proposed open-water marine survey and equipment recovery and maintenance activity in 2013. The acoustic ''net'' array used during the 2006–2012 field seasons in the Chukchi Sea was designed to accomplish two main objectives. The first was to collect information on the occurrence and distribution of marine mammals (including beluga whale, bowhead whale, walrus and other species) that may be available to subsistence hunters near villages located on the Chukchi Sea coast and to document their relative abundance, habitat use, and migratory patterns. The second objective was to measure the ambient soundscape throughout the eastern Chukchi Sea and to record received levels of sounds from industry and other activities further offshore in the Chukchi Sea.

The basic components of this effort consist of autonomous acoustic recorders deployed widely across the US Chukchi Sea through the open water season and then the winter season. These precisely calibrated systems will sample at 16 kHz with 24-bit resolution, and are capable of recording marine mammal sounds and making anthropogenic noise measurements. The net array configuration will include a regional array of 24 Autonomous Multichannel Acoustic Recorders (AMAR) deployed July-October off the four main transect locations: Cape Lisburne, Point Hope, Wainwright and Barrow. These will be augmented by six AMARs deployed August 2013–August 2014 at Hanna Shoal. Six additional AMAR recorders will be deployed in a hexagonal geometry at 16 km from the nominal Burger A exploratory well location to monitor directional variations of equipment recovery/maintenance and support vessel sounds in addition to examining marine mammal vocalization patterns in the vicinity of these activities. One new recorder will be placed 32 km northwest of the Burger A well site to monitor for sound propagation toward the south side of Hanna Shoal, which acoustic and satellite tag monitoring has identified as frequented by walrus in August. Marine survey activities will occur in areas within the coverage of the net array. All of these offshore systems will capture marine survey and equipment recovery/maintenance sounds, where present, over large distances to help characterize the sound transmission properties in the Chukchi Sea. They will continue to provide a large amount of information related to marine mammal distributions in the Chukchi Sea.

In early October, all of the regional recorders will be retrieved except for the six Hanna Shoal recorders, which will continue to record on a duty cycle until August 2014. An additional set of nine Aural winter recorders will be deployed at the same time at the same locations that were instrumented in winter 2012–2013. These recorders will sample at 16

kHz on a 17% duty cycle (40 minutes every 4 hours). The winter recorders deployed in previous years have provided important information about bowhead, beluga, walrus and several seal species migrations in fall and spring.

*Monitoring Plan Peer Review*

The MMPA requires that monitoring plans be independently peer reviewed ''where the proposed activity may affect the availability of a species or stock for taking for subsistence uses'' (16 U.S.C. 1371(a)(5)(D)(ii)(III)). Regarding this requirement, NMFS' implementing regulations state, ''Upon receipt of a complete monitoring plan, and at its discretion, [NMFS] will either submit the plan to members of a peer review panel for review or within 60 days of receipt of the proposed monitoring plan, schedule a workshop to review the plan'' (50 CFR 216.108(d)).

NMFS convened an independent peer review panel to review Shell's mitigation and monitoring plan in its IHA application for taking marine mammals incidental to the proposed open-water marine surveys and equipment recovery and maintenance in the Chukchi Sea during 2013. The panel met on January 8 and 9, 2013, and provided their final report to NMFS on March 5, 2013. The full panel report can be viewed at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.*

NMFS provided the panel with Shell's monitoring and mitigation plan and asked the panel to address the following questions and issues for Shell's plan:

- Will the applicant's stated objectives effectively further the understanding of the impacts of their activities on marine mammals and otherwise accomplish the goals stated below? If not, how should the objectives be modified to better accomplish the goals above?
- Can the applicant achieve the stated objectives based on the methods described in the plan?
- Are there technical modifications to the proposed monitoring techniques and methodologies proposed by the applicant that should be considered to better accomplish their stated objectives?
- Are there techniques not proposed by the applicant (i.e., additional monitoring techniques or methodologies) that should be considered for inclusion in the applicant's monitoring program to better accomplish their stated objectives?
- What is the best way for an applicant to present their data and results (formatting, metrics, graphics, etc.) in the required reports that are to be submitted to NMFS (i.e., 90-day report and comprehensive report)?

The peer review panel report contains recommendations that the panel members felt were applicable to the Shell's monitoring plans. Overall the panel feels that the proposed methods for visual monitoring are adequate and appropriate as the primary means of assessing the acute near-field impacts of the proposed marine surveys. The panel also cautions that there should be realistic expectations regarding the limitations of these surveys to provide scientific-level measurements of distribution and density, but in terms of meeting the monitoring requirements, the panel finds the proposed methods adequate and appreciate the improvements and modifications (e.g., in terms of PSO training, field data collection methods) made over the past few years. Nevertheless, the panel also provides several recommendations concerning improving night-time monitoring, passive acoustic monitoring, and data analysis and presentation.

NMFS has reviewed the report and evaluated all recommendations made by the panel. NMFS has determined that there are several measures that Shell can incorporate into its 2013 open-water marine surveys and equipment recovery and maintenance program. Additionally, there are other recommendations that NMFS has determined would also result in better data collection, and could potentially be implemented by oil and gas industry applicants, but which likely could not be implemented for the 2013 open-water season due to time constrains for this season. While it may not be possible to implement those changes this year, NMFS believes that they are worthwhile and appropriate suggestions that may require a bit more time to implement, and Shell should consider incorporating them into future monitoring plans should Shell decide to apply for IHAs in the future.

The following subsections lay out measures that NMFS recommends for implementation as part of the 2013 open-water marine surveys and equipment recovery and maintenance program by Shell (and incorporates into the IHA) and, separately, those that are recommended for future programs.

*Included in the 2013 Monitoring Plan*

The peer review panel's report contains several recommendations regarding visual monitoring during low-visibility and presentation of data in reports, which NMFS agrees that Shell should incorporate and included in the IHA:

(1) Visual monitoring during low-visibility

- Shell should use the best available technology to improve detection capability during periods of fog and other types of inclement weather. Such technology might include night-vision goggles or binoculars as well as other instruments that incorporate infrared technology; presently the efficacy of these technologies appears limited but the panel and NMFS encourage continued consideration of their applicability as it continues to evolve.

(2) Data analysis and presentation

- Shell should apply appropriate statistical procedures for probability estimation of marine mammals missed, based on observational data acquired during some period of time before and after night or fog events.
- Shell should provide useful summaries and interpretations of results of the various elements of the monitoring results. A clear timeline and spatial (map) representation/summary of operations and important observations should be given. Any and all mitigation measures (e.g., vessel course deviations for animal avoidance, operational shut down) should be summarized. Additionally, an assessment of the efficacy of monitoring methods should be provided.

In addition to these recommendations, Shell also agrees to produce a weekly GIS application that would be available on the web for regulators to view for every observation and mitigation measure implemented.

*Recommendations to be Partially Implemented or Considered for Future Monitoring Plans*

In addition, the panelists recommended that:

- Shell should integrate the acoustic information from the net array to the greatest extent possible to assess the aggregate known activities, at least those from Shell operations but more broadly as possible, to assess patterns of marine mammal vocal activities and how that might be used to investigate potentially broader impacts from overlapping/interacting activities.
- Shell should consider integration of visual and acoustic data from the Chukchi monitoring program and the Joint Monitoring Program to produce estimates of bowhead, beluga, and walrus density using methods developed in the Density Estimation for Cetacean from Passive Acoustic Fixed Sensors (DECAF) project by the Center

for Research into Ecological and Environmental Modeling (CREEM) at the University of St. Andrews in Scotland.

After discussion with Shell, NMFS decided not to implement these two recommendations in full during Shell's 2013 open-water marine surveys and equipment recovery and maintenance program because the systematic and comprehensive analyses of these acoustic datasets would require far more time and effort than what would be needed to assess marine mammal takes under the MMPA. However, Shell agrees that it will provide data from net arrays supported in part, or in whole, by Shell and will participate in the integration of acoustic arrays to assess the sound field of the lease areas in the Chukchi and Beaufort seas for the purposes of assessing patterns of marine mammal distribution and behavior and for assessing the impacts of multiple activities/factors. In addition, Shell will evaluate the potential of the DECAF project and efforts will be made to assess the applicability of the data collection infrastructure established in the Shell monitoring program to these and similar studies.

**II. Reporting Measures**

*Sound Source Verification Reports*

A report on the preliminary results of the sound source verification measurements, including the measured 190, 180, 160, and 120 dB (rms) radii of the airgun sources, will be submitted within 14 days after collection of those measurements at the start of the field season. This report will specify the distances of the exclusion zones that were adopted for the survey.

*Field Reports*

Throughout the survey program, PSOs will prepare a report each day or at such other intervals, summarizing the recent results of the monitoring program. The reports will summarize the species and numbers of marine mammals sighted. These reports will be provided to NMFS and to the survey operators.

*Technical Reports*

The results of Shell's 2013 vessel-based monitoring, including estimates of ''take'' by harassment, will be presented in the ''90-day'' and Final Technical reports. The Technical Reports should be submitted to NMFS within 90 days after the end of the seismic survey. The Technical Reports will include:

(a) summaries of monitoring effort (e.g., total hours, total distances, and marine mammal distribution through the study period, accounting for sea state and other factors affecting visibility and detectability of marine mammals);

(b) analyses of the effects of various factors influencing detectability of marine mammals (e.g., sea state, number of observers, and fog/glare);

(c) species composition, occurrence, and distribution of marine mammal sightings, including date, water depth, numbers, age/size/gender categories (if determinable), group sizes, and ice cover;

(d) To better assess impacts to marine mammals, data analysis should be separated into periods when a seismic airgun array (or a single mitigation airgun) is operating and when it is not. Final and comprehensive reports to NMFS should summarize and plot:

- Data for periods when a seismic array is active and when it is not; and
- The respective predicted received sound conditions over fairly large areas (tens of km) around operations;

(e) sighting rates of marine mammals during periods with and without airgun activities (and other variables that could affect detectability), such as:

- Initial sighting distances versus airgun activity state;
- closest point of approach versus airgun activity state;
- observed behaviors and types of movements versus airgun activity state;
- numbers of sightings/individuals seen versus airgun activity state;
- distribution around the survey vessel versus airgun activity state; and
- estimates of take by harassment;

(f) Reported results from all hypothesis tests should include estimates of the associated statistical power when practicable;

(g) Estimate and report uncertainty in all take estimates. Uncertainty could be expressed by the presentation of confidence limits, a minimum-maximum, posterior probability distribution, etc.; the exact approach would be selected based on the sampling method and data available;

(h) The report should clearly compare authorized takes to the level of actual estimated takes; and

*Notification of Injured or Dead Marine Mammals*

In addition, NMFS would require Shell to notify NMFS' Office of Protected Resources and NMFS' Stranding Network within 48 hours of sighting an injured or dead marine mammal in the vicinity of marine survey operations. Shell shall provide NMFS with the species or description of the animal(s), the condition of the animal(s) (including carcass condition if the animal is dead), location, time of first discovery, observed behaviors (if alive), and photo or video (if available).

In the event that an injured or dead marine mammal is found by Shell that is not in the vicinity of the proposed open-water marine survey program, Shell would report the same information as listed above as soon as operationally feasible to NMFS.

**Estimated Take by Incidental Harassment**

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment]. Only take by Level B behavioral harassment is anticipated as a result of the proposed open water marine survey program. Anticipated impacts to marine mammals are associated with noise propagation from the survey airgun(s) used in the shallow hazards survey.

The full suite of potential impacts to marine mammals was described in detail in the ''Potential Effects of the Specified Activity on Marine Mammals'' section found earlier in this document. The potential effects of sound from the proposed open water marine survey programs might include one or more of the following: masking of natural sounds; behavioral disturbance; non-auditory physical effects; and, at least in theory, temporary or permanent hearing impairment (Richardson *et al.* 1995). As discussed earlier in this document, the most common impact will likely be from behavioral disturbance, including avoidance of the ensonified area or changes in speed, direction, and/or diving profile of the animal. For reasons discussed previously in this document, hearing impairment (TTS and PTS) is highly unlikely to occur based on the required mitigation and monitoring measures that would preclude marine mammals from being exposed to noise levels high enough to cause hearing impairment.

For impulse sounds, such as those produced by airgun(s) used in the site clearance and shallow hazards surveys, NMFS uses the 160 dB (rms) re 1 μPa isopleth to indicate the onset of Level B harassment. For non-impulse sounds, such as those produced by vessel's DP thrusters during the proposed

equipment recovery and maintenance program, NMFS uses the 120 dB (rms) re 1 μPa isopleth to indicate the onset of Level B harassment. Shell provided calculations for both the 160- and 120-dB isopleths produced by these activities and then used those isopleths to estimate takes by harassment. NMFS used the calculations to make the necessary MMPA findings. Shell provided a full description of the methodology used to estimate takes by harassment in its IHA application, which is also provided in the following sections.

*Basis for Estimating ''Take by Harassment''*

The estimated takes by harassment is calculated in this section by multiplying the expected densities of marine mammals that may occur near the planned activities by the area of water likely to be exposed to impulse sound levels of ≥160 dB (rms) re 1 μPa and non-impulse sound levels ≥120 dB (rms) re 1 μPa.

Marine mammal occurrence near the operation is likely to vary by season and habitat, mostly related to the presence or absence of sea ice. Although current NMFS' noise exposure standards state that Level B harassment occurs at exposure levels ≥160 dB (rms) re 1 μPa by impulse sources and exposure levels ≥120 dB (rms) re 1 μPa by non-impulse sources, there is no evidence that avoidance at these received sound levels would have significant biological effects on individual animals. Any changes in behavior caused by sounds at or near the specified received levels would likely fall within the normal variation in such activities that would occur in the absence of the planned operations. However, these received levels are currently used to set the threshold for Level B behavioral harassment.

*Marine Mammal Density Estimates*

Marine mammal density estimates in the Chukchi Sea have been derived for two time periods, the summer period covering July and August, and the fall period including September and October. Animal densities encountered in the Chukchi Sea during both of these time periods will further depend on the habitat zone within which the operations are occurring: open water or ice margin. Vessel and equipment limitations will result in very little activity occurring in or near sea ice; however, if ice is present near the areas of activity some sounds produced by the activities may remain above disturbance threshold levels in ice margin habitats. Therefore, open water densities have been used to estimate potential ''take by harassment'' in 90 percent of the area expected to be ensonified above disturbance thresholds while ice margin densities have been used in the remaining 10 percent of the ensonified area.

For a few marine mammal species, several density estimates were available. In those cases, the mean and maximum estimates were determined from the reported densities or survey data. In other cases, no applicable estimate was available, so correction factors were used to arrive density estimates. These are described in detail in the following sections.

Detectability bias, quantified in part by f(0), is associated with diminishing sightability with increasing lateral distance from the survey trackline. Availability bias, g(0), refers to the fact that there is <100 percent probability of sighting an animal that is present along the survey trackline.

Nine cetacean and four pinniped species under NMFS jurisdiction are known to occur in the planned project area in the Chukchi Sea. Five of them (bowhead, fin, and humpback whales, and ringed and bearded seals) are listed as ''endangered'' or ''threatened'' under the ESA.

(1) Beluga Whale

Summer densities of belugas in offshore waters are expected to be low, with somewhat higher densities in ice-margin and nearshore areas. Aerial surveys have recorded few belugas in the offshore Chukchi Sea during the summer months (Moore *et al.* 2000). Aerial surveys of the Chukchi Sea in 2008–2009 flown by the National Marine Mammal Laboratory (NMML) as part of the Chukchi Offshore Monitoring in Drilling Area (COMIDA) project have only reported 5 beluga sightings during >8,700 mi (>14,000 km) of on-transect effort, only 2 of which were offshore (COMIDA 2009). One of the three nearshore sightings was of a large group (~275 individuals on July 12, 2009) of migrating belugas along the coastline just north of Peard Bay. Additionally, only one beluga sighting was recorded during >49,710 mi (>80,000 km) of visual effort during good visibility conditions from industry vessels operating in the Chukchi Sea in September–October of 2006–2010 (Hartin *et al.* 2011). If belugas are present during the summer, they are more likely to occur in or near the ice edge or close to shore during their northward migration. Expected densities have previously been calculated from data in Moore *et al.* (2000). However, more recent data from COMIDA aerial surveys during 2008–2010 are now available (Clarke and Ferguson in prep.). Effort and sightings reported by Clarke and Ferguson (in prep.) were used to calculate the average open-water density estimate. Clarke and Ferguson (in prep) reported two on-transect beluga sightings (5 individuals) during 11,985 km of on-transect effort in waters 36–50 m deep in the Chukchi Sea during July and August. The mean group size of these two sightings is 2.5. A f(0) value of 2.841 and g(0) value of 0.58 from Harwood *et al.* (1996) were also used in the density calculation. Specific data on the relative abundance of beluga in open-water versus ice-margin habitat during the summer in the Chukchi Sea is not available. However, belugas are commonly associated with ice, so an inflation factor of 4 was used to estimate the average ice-margin density from the open-water density. Very low densities observed from vessels operating in the Chukchi Sea during non-seismic periods and locations in July-August of 2006–2010 (0.0–0.0003/mi$^2$, 0.0–0.0001/km2; Hartin *et al.* 2011), also suggest the number of beluga whales likely to be present near the planned activities will not be large.

In the fall, beluga whale densities offshore in the Chukchi Sea are expected to be somewhat higher than in the summer because individuals of the eastern Chukchi Sea stock and the Beaufort Sea stock will be migrating south to their wintering grounds in the Bering Sea (Allen and Angliss 2012). Densities derived from survey results in the northern Chukchi Sea in Clarke and Ferguson (in prep) were used as the average density for open-water fall season estimates. Clarke and Ferguson (in prep) reported 3 beluga sightings (6 individuals) during 10,036 km of on-transect effort in water depths 36–50 m. The mean group size of those three sightings is 2. A f(0) value of 2.841 and g(0) value of 0.58 from Harwood *et al.* (1996) were used in the calculation. Moore *et al.* (2000) reported lower than expected beluga sighting rates in open-water during fall surveys in the Beaufort and Chukchi seas, so an inflation value of 4 was used to estimate the average ice-margin density from the open-water density. Based on the few beluga sightings from vessels operating in the Chukchi Sea during non-seismic periods and locations in September-November of 2006–2010 (Hartin *et al.* 2011), the relatively low densities are consistent with what is likely to be observed from vessels during the planned operations.

(2) Bowhead Whale

By July, most bowhead whales are northeast of the Chukchi Sea, within or

migrating toward their summer feeding grounds in the eastern Beaufort Sea. No bowheads were reported during 6,640 mi (10,686 km) of on-transect effort in the Chukchi Sea by Moore *et al.* (2000). Aerial surveys in 2008–2010 by the NMML as part of the COMIDA project reported only 6 sightings during >16,020 mi (>25,781 km) of on-transect effort (Clarke and Ferguson in prep). Two of the six sightings were in waters ≤35 m deep and the remaining four sightings were in waters 51–200 m deep. Bowhead whales were also rarely sighted in July–August of 2006–2010 during aerial surveys of the Chukchi Sea coast (Thomas *et al.* 2011). This is consistent with movements of tagged whales, all of which moved through the Chukchi Sea by early May 2009, and tended to travel relatively close to shore, especially in the northern Chukchi Sea. The estimate of bowhead whale density in the Chukchi Sea was calculated by assuming there was one bowhead sighting during the 7,447 mi (11,985 km) of survey effort in waters 36–50 m deep in the Chukchi Sea during July–August reported in Clarke and Ferguson (in prep), although no bowheads were actually observed during those surveys. The mean group size from September–October sightings reported in Clarke and Ferguson (in prep) is 1.1, and this was also used in the calculation of summer densities. The group size value, along with a f(0) value of 2 and a g(0) value of 0.07, both from Thomas *et al.* (2002) were used to estimate a summer density of bowhead whales. Bowheads are not expected to be encountered in higher densities near ice in the summer (Moore *et al.* 2000), so the same density estimates are used for open-water and ice-margin habitats. Densities from vessel based surveys in the Chukchi Sea during non-seismic periods and locations in July–August of 2006–2010 (Hartin *et al.* 2011) ranged from 0.0005–0.0021/mi$^2$ (0.0002–0.0008/km$^2$).

During the fall, bowhead whales that summered in the Beaufort Sea and Amundsen Gulf migrate west and south to their wintering grounds in the Bering Sea making it more likely that bowheads will be encountered in the Chukchi Sea at this time of year. Moore *et al.* (2000) reported 34 bowhead sightings during 27,560 mi (44,354 km) of on-transect survey effort in the Chukchi Sea during September–October. Thomas *et al.* (2011) also reported increased sightings on coastal surveys of the Chukchi Sea during October and November of 2006–2010. GPS tagging of bowheads appear to show that migration routes through Chukchi Sea are more variable than through the Beaufort Sea (Quakenbush *et al.* 2010). Some of the routes taken by bowheads remain well north of the planned marine survey activities while others have passed near to or through the area. Kernel densities estimated from GPS locations of whales suggest that bowheads do not spend much time (e.g., feeding or resting) in the north-central Chukchi Sea near the area of planned activities (Quakenbush *et al.* 2010). Clarke and Ferguson (in prep) reported 14 sightings (15 individuals) during 10,036 km of on transect aerial survey effort in 2008–2010. The mean group size of those sightings is 1.1. The same f(0) and g(0) values that were used for the summer estimates above were used for the fall estimates. Moore *et al.* (2000) found that bowheads were detected more often than expected in association with ice in the Chukchi Sea in September–October, so a density of twice the average open-water density was used as the average ice-margin density. Densities from vessel based surveys in the Chukchi Sea during non-seismic periods and locations in September–November of 2006–2010 (Hartin et al. 2011) ranged from 0.0008 to 0.0135/mi$^2$ (0.0003–0.0052/km$^2$). This suggests the densities used in the calculations are somewhat higher than are likely to be observed from vessels near the areas of planned operations.

(3) Gray Whale

Gray whale densities are expected to be much higher in the summer months than during the fall. Moore *et al.* (2000) found the distribution of gray whales in the planned operational area was scattered and limited to nearshore areas where most whales were observed in water less than 114 ft (35 m) deep. Thomas *et al.* (2011) also reported substantial declines in the sighting rates of gray whales in the fall. The average open-water summer density was calculated from 2008–2010 aerial survey effort and sightings in Clarke and Ferguson (in prep) for water depths 118–164 ft (36–50 m) including 54 sightings (73 individuals) during 7,447 mi (11,985 km) of on-transect effort. The average group size of those sightings is 1.35. Correction factors f(0) = 2.49 (Forney and Barlow 1998) and g(0) = 0.30 (Forney and Barlow 1998, Mallonee 1991) were also used in the density calculation. Gray whales are not commonly associated with sea ice, but may be present near it, so the same densities were used for ice-margin habitat as were derived for open-water habitat during both seasons. Densities from vessel based surveys in the Chukchi Sea during non-seismic periods and locations in July–August of 2006–2010 (Hartin *et al.* 2011) ranged from 0.0021/mi$^2$ to 0.0221/mi$^2$ (0.0008/km$^2$ to 0.0085/km$^2$).

In the fall, gray whales may be dispersed more widely through the northern Chukchi Sea (Moore *et al.* 2000), but overall densities are likely to be decreasing as the whales begin migrating south. A density calculated from effort and sightings (15 sightings [19 individuals] during 6,236 mi (10,036 km) of on-transect effort) in water 118–164 ft (36–50 m) deep during September–October reported by Clarke and Ferguson (in prep) was used as the average estimate for the Chukchi Sea during the fall period. The corresponding group size value of 1.26, along with the same f(0) and g(0) values described above were used in the calculation. Densities from vessel based surveys in the Chukchi Sea during non-seismic periods and locations in September-November of 2006–2010 (Hartin *et al.* 2011) ranged from 0.0/mi$^2$ to 0.0114/mi$^2$ (0.0/km$^2$ to 0.0044/km$^2$).

(4) Harbor Porpoise

Harbor Porpoise densities were estimated from industry data collected during 2006–2010 activities in the Chukchi Sea. Prior to 2006, no reliable estimates were available for the Chukchi Sea and harbor porpoise presence was expected to be very low and limited to nearshore regions. Observers on industry vessels in 2006–2010, however, recorded sightings throughout the Chukchi Sea during the summer and early fall months. Density estimates from 2006–2010 observations during non-seismic periods and locations in July-August ranged from 0.0034/mi$^2$ to 0.0075/mi$^2$ (0.0013/km$^2$ to 0.0029/km$^2$) (Hartin *et al.* 2011). The average density from the summer season of those three years (0.0057/mi$^2$, 0.0022/km$^2$) was used as the average open-water density estimate. Harbor porpoise are not expected to be present in higher numbers near ice, so the open-water densities were used for ice-margin habitat in both seasons. Harbor porpoise densities recorded during industry operations in the fall months of 2006–2010 were slightly lower and ranged from 0.0/mi$^2$ to 0.0114/mi$^2$ (0.0/km$^2$ to 0.0044/km$^2$). The average of those years (0.0055/mi$^2$, 0.0021/km$^2$) was again used as the average density estimate.

(5) Other Cetaceans

The remaining five cetacean species that could be encountered in the Chukchi Sea during Shell's planned marine survey program include the humpback whale, killer whale, minke whale, fin whale, and narwhal. Although there is evidence of the occasional occurrence of these animals

in the Chukchi Sea, it is unlikely that more than a few individuals will be encountered during the planned marine survey activities. Clarke *et al.* (2011b) and Hartin *et al.* (2011) reported humpback whale sightings; George and Suydam (1998) reported killer whales; Brueggeman *et al.* (1990), Hartin *et al.* (2011) and COMIDA (2011) reported minke whales; and Clarke *et al.* (2011b) and Hartin *et al.* (2011) reported fin whales. Narwhal sightings in the Chukchi Sea have not been reported in recent literature, but subsistence hunters occasionally report observations near Barrow, and Reeves *et al.* (2002) indicated a small number of extralimital sightings in the Chukchi Sea.

(6) Ringed and Bearded Seals

Ringed seal and bearded seals summer ice-margin densities were available in Bengtson *et al.* (2005) from spring surveys in the offshore pack ice zone of the northern Chukchi Sea. However, corrections for bearded seal availability, g(0), based on haulout and diving patterns were not available. Densities of ringed and bearded seals in open water are expected to be somewhat lower in the summer when preferred pack ice habitat may still be present in the Chukchi Sea. Average and maximum open-water densities have been estimated at ¾ of the ice margin densities during both seasons for both species. The fall density of ringed seals in the offshore Chukchi Sea has been estimated as ⅔ the summer densities because ringed seals begin to reoccupy nearshore fast ice areas as it forms in the fall. Bearded seals may also begin to leave the Chukchi Sea in the fall, but less is known about their movement patterns so fall densities were left unchanged from summer densities. For comparison, the ringed seal density estimates calculated from data collected during summer 2006–2010 industry operations ranged from 0.0359/mi$^2$ to 0.1206/mi$^2$ (0.0138/km$^2$ to 0.0464/km$^2$) (Hartin *et al.* 2011). These estimates are lower than those made by Bengtson *et al.* (2005) which is not surprising given the different survey methods and timing.

(7) Spotted Seal

Little information on spotted seal densities in offshore areas of the Chukchi Sea is available. Spotted seal densities in the summer were estimated by multiplying the ringed seal densities by 0.02. This was based on the ratio of the estimated Chukchi populations of the two species. Chukchi Sea spotted seal abundance was estimated by assuming that 8 percent of the Alaskan population of spotted seals is present in the Chukchi Sea during the summer and fall (Rugh *et al.* 1997), the Alaskan population of spotted seals is 59,214 (Allen and Angliss 2012), and that the population of ringed seals in the Alaskan Chukchi Sea is ~208,000 animals (Bengtson *et al.* 2005). In the fall, spotted seals show increased use of coastal haulouts so densities were estimated to be ⅔ of the summer densities.

(8) Ribbon Seals

Four ribbon seal sightings were reported during industry vessel operations in the Chukchi Sea in 2006–2010 (Hartin *et al.* 2011). The resulting density estimate of 0.0013/mi$^2$ (0.0007/km$^2$) was used for both seasons and habitat zones.

*Area Potentially Exposed to Sound Levels Above 160 dB During Site Clearance and Shallow Hazards Surveys*

As described earlier, Shell's proposed site clearance and shallow hazards surveys would occur in three survey areas of the Chukchi Sea Lease Area. These three survey areas are the Burger prospect (Survey Area 2), Crackerjack prospect (Survey Area 1), and an area northeast of Burger (Survey Area 3; Figure 1–2 of the IHA application). The precise survey sites within the survey areas at these prospects have not yet been determined, but there are five notional locations at Burger, three at Crackerjack, and one northeast of Burger. The five potential survey sites at Burger range in size from 23 km$^2$ to 40 km$^2$ (9 mi$^2$ to 15 mi$^2$) while the three potential sites at Crackerjack range from 35 km$^2$ to 119 km$^2$ (14 mi$^2$ to 46 mi$^2$). The single site northeast of Burger may be ~119 km$^2$ (46 mi$^2$).

Shell plans to use the same 4 x 10 in$^3$ airgun configuration that was used during site clearance and shallow hazards surveys in the Chukchi Sea in 2008 and 2009. Measurements during these two years occurred at three locations: Honeyguide (west of the Crackerjack prospect), Crackerjack, and Burger. The measurements showed that the Burger site had the largest radius from the source to the 160 dB (rms) re 1 μPa isopleths at 1,800 m. As a cautionary approach, the Burger site distance (1,800 m from the source) plus a 25 percent inflation factor (equaling 2,250 m) was used to estimate the total area that may be ensonified to 160 dB (rms) re 1 μPa by seismic sounds at all of the potential survey sites at any given time, which equals to 15.9 km$^2$.

Shell's operations plan calls for site clearance and shallow hazards surveys to begin at the Burger prospect. Adding the 2.25 km 160 dB (rms) radius to the perimeter of all five of the notional survey grids at that site results in a total area at Burger of 477 km$^2$ being exposed to seismic sound ≥160 dB (rms). This is approximately 40 percent of the total area that may be exposed to seismic sounds during the survey activities and it has been attributed to the July–August period. Adding the 2.25 km 160 dB (rms) radius to the perimeter of the three notional survey areas at Crackerjack and the one northeast of Burger results in a total area of 826 km$^2$ being potentially exposed to pulsed seismic sounds ≥160 dB (rms). Since these areas would likely be surveyed after the Burger sites are completed they have been attributed to the September–October period. The total area potentially exposed is then 1,303 km$^2$ (477 km$^2$ + 826 km$^2$).

*Area Potentially Exposed to Sound Levels Above 120 dB During Equipment Recovery and Maintenance Program*

As described earlier, Shell's proposed equipment recovery and maintenance at the Burger A well site where drilling took place in 2012 would involve a vessel engaging with DP thrusters while remotely operated vehicles or divers are used to perform the required work. Sounds produced by the vessel while in dynamic positioning mode will be non-impulse in nature and are thus evaluated at the ≥120 dB (rms) level.

The vessel from which equipment recovery and maintenance will be conducted has not yet been determined. Various sound measurements were conducted from vessels during DP operations and during drilling activities (which may include DP operations) in the Chukchi Sea in the past two years. Under most circumstances, sounds from dynamic positioning thrusters are expected to be well below 120 dB (rms) at distances greater than 10 km (6 mi). Among those measurements, the drilling activities conducted by the *Tor Viking II* at the Burger A well site in 2012 may have included dynamic positioning, and its distance of 13 km (8 mi) was selected to model the 120 dB (rms) re 1 μPa isopleths for Shell's proposed 2013 equipment recovery and maintenance program. This yields to a 120 dB (rms) re 1 μPa ensonified zone of approximately 531 km$^2$ (205 mi$^2$).

The equipment recovery and maintenance work at the well site may occur during either or both of the seasonal periods and may take place over as many as 28 days. Therefore, the entire area potentially exposed to continuous sounds ≥120 dB (rms) from dynamic positioning thrusters has been applied to densities of marine mammals during both seasonal periods.

*Potential Number of ''Take by Harassment''*

As stated earlier, the estimates of potential Level B takes of marine mammals by noise exposure are based on a consideration of the number of marine mammals that might be present during operations in the Chukchi Sea and the anticipated area exposed to those sound pressure levels (SPLs) above 160 dB re 1 μPa for impulse sources (seismic aregun during site clearance and shallow hazards surveys) and SPLs above 120 dB re 1 μPa for non-impulse sources (vessel's DP operation during equipment recovery and maintenance program).

The number of individuals of each species potentially exposed to received levels was estimated by multiplying the anticipated area to be ensonified to the specified SPLs in each season (summer and fall) and habitat zone (open water and ice margin) to which a density applies, by the expected species density. The numbers of individuals potentially exposed were then summed for each species across the two seasons and habitat zones.

An additional calculation was made that assumes the entire population of marine mammals within the 531 $km^2$ (205 $mi^2$) area exposed to non-pulsed sounds ≥120 dB (rms) re 1 μPa during the equipment recovery and maintenance activity is different every day during that 28 day period. To do this, the 28 days were split evenly between the July–August and September–October periods (14 days in each period). The area ensonified by continuous sounds on each day was then multiplied by 14 before being multiplied by the appropriate species density within each season.

Some of the animals estimated to be exposed, particularly migrating bowhead whales, might show avoidance reactions before being exposed to sounds at the specified threshold levels. Thus, these calculations actually estimate the number of individuals potentially exposed to the specified sounds levels that would occur if there were no avoidance of the area ensonified to that level.

As described above, vessel and equipment limitations will result in very little activity occurring in or near sea ice; however, if ice is present near the areas of activity, some sounds produced by the activities may remain above disturbance threshold levels in ice margin habitats. Therefore, open water densities have been used to estimate potential ''take by harassment'' in 90 percent of the area expected to be ensonified above disturbance thresholds while ice margin densities have been used in the remaining 10 percent of the ensonified area. Species with an estimated average number of individuals exposed equal to zero are included below for completeness, but are not likely to be encountered.

Numbers of marine mammals that might be present and potentially taken are summarized in Table 4 based on calculation described above.

Some of the animals estimated to be exposed, particularly migrating bowhead whales, might show avoidance reactions before being exposed to ≥160 dB (rms) re 1 μPa. Thus, these calculations actually estimate the number of individuals potentially exposed to specific SPLs, i.e., ≥160 dB (rms) re 1 μPa for impulse noise and ≥120 dB (rms) re 1 μPa for non-impulse noise, that would occur if there were no avoidance of the area ensonified to that level.

Because beluga whales may form groups, additional takes were added on top of the density-based take calculation in the event a large group is encountered during the survey. For marine mammal species that are rare and for which no density estimates are available in the vicinity of the proposed project area (such as humpback, fin, minke, and killer whales and narwhal), a small number of takes have been requested in case they are encountered (Table 4).

TABLE 4—ESTIMATES OF THE POSSIBLE MAXIMUM NUMBERS OF MARINE MAMMALS TAKEN BY LEVEL B HARASSMENT (EXPOSED TO ≥160 dB FROM AIRGUN SOUND AND ≥120 dB FROM DYNAMIC POSITIONING OPERATIONS) DURING SHELL'S PROPOSED MARINE SURVEY AND EQUIPMENT RECOVERY AND MAINTENANCE ACTIVITY IN THE CHUKCHI SEA, JULY—OCTOBER 2013, INCLUDING A DAILY MULTIPLIER FOR THE ENTIRE 28 DAYS OPERATIONAL PERIOD AT THE BURGER A WELL SITE

| Species | Level B takes | Percent population |
|---|---|---|
| Bowhead whale | 209 | 1.98 |
| Gray whale | 270 | 1.41 |
| Fin whale | 10 | 0.18 |
| Humpback whale | 10 | 1.07 |
| Minke whale | 10 | 1.23 |
| Beluga whale* | 53 | 1.43 |
| Narwhal | 4 | NA |
| Killer whale | 10 | 3.18 |
| Harbor porpoise | 35 | 0.07 |
| Ringed seal | 5,096 | 2.44 |
| Bearded seal | 178 | 0.07 |
| Spotted seal | 102 | 0.17 |
| Ribbon seal | 12 | 0.02 |

* Additional takes were added in the event that a large group of beluga whales is encountered.

*Estimated Take Conclusions*

Effects on marine mammals are generally expected to be restricted to avoidance of the area around the planned activities and short-term changes in behavior, falling within the MMPA definition of ''Level B harassment''.

Cetaceans—The average estimates without a daily multiplier for the stationary operations suggest a total of 209 bowhead whales may be exposed to sounds at or above the specified levels. This number is approximately 1.98% of the BCB population of 10,545 assessed in 2001 (Allen and Angliss 2011) and is assuming to be increasing at an annual growth rate of 3.4% (Zeh and Punt 2005), which is supported by a 2004 population estimate of 12,631 by Koski et al. (2010). Including a daily multiplier brings the average estimate up to 209 individual bowhead whales with the daily multiplier (Table 4). The total estimated number of gray whales that may be exposed to sounds from the activities ranges up to 270 with the daily multiplier (Table 4). Fewer beluga whales and harbor porpoises are likely to be exposed to sounds during the activities. The small numbers of other whale species that may occur in the Chukchi Sea are unlikely to be present around the planned operations but chance encounters may occur. The few individuals would represent a very small proportion of their respective populations.

Pinnipeds—Ringed seal is by far the most abundant species expected to be encountered during the planned operations. The best estimate of the numbers of ringed seals exposed to sounds at the specified received levels during the planned activities is 727 not including a daily multiplier, and 5,096 if a daily multiplier is included. Both of these numbers represent <3 percent of the estimated Alaska population. Fewer individuals of other pinniped species are estimated to be exposed to sounds at the specified received levels, also representing small proportions of their populations. Pinnipeds are unlikely to react to non-impulse sounds until received levels are much stronger than 120 dB (rms), so it is probable that a smaller number of these animals would actually be appreciably disturbed.

**Negligible Impact and Small Numbers Analysis and Determination**

As a preliminary matter, we typically include our negligible impact and small numbers analyses and determinations under the same section heading of our **Federal Register** Notices. Despite co-locating these terms, we acknowledge

that negligible impact and small numbers are distinct standards under the MMPA and treat them as such. The analyses presented below do not conflate the two standards; instead, each standard has been considered independently and we have applied the relevant factors to inform our negligible impact and small numbers determinations.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''. . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' In making a negligible impact determination, NMFS considers a variety of factors, including but not limited to: (1) the number of anticipated mortalities; (2) the number and nature of anticipated injuries; (3) the number, nature, intensity, and duration of Level B harassment; and (4) the context in which the takes occur.

No injuries or mortalities are anticipated to occur as a result of Shell's proposed 2013 marine surveys and equipment recovery and maintenance program in the Chukchi Sea, and none are authorized. The proposed site clearance and shallow hazards surveys would use a very small 40 $in^3$ airgun array, which have much less acoustic power outputs compared to conventional airgun arrays with displacement volume in the range of thousands of cubic inches. The modeled isopleths at 180 dB, based on prior measurements for the same airgun array in the vicinity of the 2013 survey sites, is expected to be 160 m from the source at maximum. Source levels from vessel's DP thrusters during Shell's proposed equipment recovery and maintenance program are below 180 dB re 1 μPa.

In addition, animals in the area are not expected to incur hearing impairment (i.e., TTS or PTS) or non-auditory physiological effects. The modeled isopleths at 160 dB and 120 dB, based on prior measurements, are expected to be approximately 1.8 km and 13km from the airgun array and DP-operating vessel, respectively. Takes will be limited to Level B behavioral harassment. Although it is possible that some individuals of marine mammals may be exposed to sounds from the proposed site clearance and shallow hazard surveys and equipment recovery and maintenance activities more than once, the expanse of these multi-exposures are expected to be less extensive since either the animals or the vessels conducting the marine surveys will be moving constantly in and out of the survey areas.

Most of the bowhead whales encountered will likely show overt disturbance (avoidance) only if they receive airgun sounds with levels ≥ 160 dB re 1 μPa. Odontocete reactions to seismic airgun pulses are usually assumed to be limited to shorter distances from the airgun(s) than are those of mysticetes, probably in part because odontocete low-frequency hearing is assumed to be less sensitive than that of mysticetes. However, at least when in the Canadian Beaufort Sea in summer, belugas appear to be fairly responsive to seismic energy, with few being sighted within 6–12 mi (10–20 km) of seismic vessels during aerial surveys (Miller *et al.* 2005). Belugas will likely occur in small numbers in the Chukchi Sea during the survey period and few will likely be affected by the survey activity.

Although the stationary nature of the vessel that conducts equipment recovery and maintenance could affect different individuals of marine mammals during the operations, the relatively short period (28 days) of this activity precludes the take of large numbers of marine mammals. In addition, the noise levels generated from DP thrusters are much lower than the levels from the airgun array, and the modeled 120 dB isopleths is expected to be 13 km at the maximum, resulting an ensonified area of 531 $km^2$.

Taking into account the mitigation measures that are planned, effects on marine mammals are generally expected to be restricted to avoidance of a limited area around Shell's proposed open-water activities and short-term changes in behavior, falling within the MMPA definition of ''Level B harassment''. The many reported cases of apparent tolerance by cetaceans of seismic exploration, vessel traffic, and some other human activities show that co-existence is possible. Mitigation measures such as controlled vessel speed, dedicated marine mammal observers, non-pursuit, and shut downs or power downs when marine mammals are seen within defined ranges will further reduce short-term reactions and minimize any effects on hearing sensitivity. In all cases, the effects are expected to be short-term, with no lasting biological consequence.

Of the thirteen marine mammal species likely to occur in the proposed marine survey area, bowhead, fin, and humpback whales and ringed and bearded seals are listed as endangered or threatened under the ESA. These species are also designated as ''depleted'' under the MMPA. Despite these designations, the Bering-Chukchi-Beaufort stock of bowheads has been increasing at a rate of 3.4 percent annually for nearly a decade (Allen and Angliss 2010). Additionally, during the 2001 census, 121 calves were counted, which was the highest yet recorded. The calf count provides corroborating evidence for a healthy and increasing population (Allen and Angliss 2010). The occurrence of fin and humpback whales in the proposed marine survey areas is considered very rare. There is no critical habitat designated in the U.S. Arctic for the bowhead, fin, and humpback whales. The Alaska stock of bearded seals, part of the Beringia distinct population segment (DPS), and the Arctic stock of ringed seals, have recently been listed by NMFS as threatened under the ESA. None of the other species that may occur in the project area are listed as threatened or endangered under the ESA or designated as depleted under the MMPA.

Potential impacts to marine mammal habitat were discussed previously in this document (see the ''Anticipated Effects on Habitat'' section). Although some disturbance is possible to food sources of marine mammals, the impacts are anticipated to be minor enough as to not affect rates of recruitment or survival of marine mammals in the area. Based on the vast size of the Arctic Ocean where feeding by marine mammals occurs versus the localized area of the marine survey activities, any missed feeding opportunities in the direct project area would be minor based on the fact that other feeding areas exist elsewhere.

The authorized take represents 1.43% of the Eastern Chukchi Sea population of approximately 3,710 beluga whales, 3.18% of Aleutian Island and Bering Sea stock of approximately 314 killer whales, 0.07% of Bering Sea stock of approximately 48,215 harbor porpoises, 1.41% of the Eastern North Pacific stock of approximately 19,126 gray whales, 1.98% of the Bering-Chukchi-Beaufort population of 10,545 bowhead whales, 1.07% of the Western North Pacific stock of approximately 938 humpback whales, 0.18% of the Northeast Pacific stock of approximately 5,700 fin whales, and 1.43% of the Alaska stock of approximately 810 minke whales. The take estimates presented for ringed, bearded, spotted, and ribbon seals represent 2.44, 0.07, 0.17, and 0.02% of U.S. Arctic stocks of each species, respectively. The percentage of Level B behavioral take of 4 individual narwhals among its population is unknown as narwhal are not regularly sighted in the U.S. Chukchi Sea. Nevertheless, it is reasonable to believe that the number of narwhal estimated to be taken is a very

low percentage of its population. The mitigation and monitoring measures (described previously in this document) required under the IHA (if issued) are expected to reduce even further any potential disturbance to marine mammals.

In addition, no important feeding and reproductive areas are known in the vicinity of the Shell's proposed marine surveys at the time the proposed surveys are to take place. No critical habitat of ESA-listed marine mammal species occurs in the Chukchi Sea.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS finds that Shell's proposed 2013 open-water marine surveys in the Chukchi Sea may result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking from the marine surveys will have a negligible impact on the affected species or stocks.

## Unmitigable Adverse Impact Analysis and Determination

NMFS has determined that Shell's proposed 2013 open-water marine surveys in the Chukchi Sea will not have an unmitigable adverse impact on the availability of species or stocks for taking for subsistence uses. This determination is supported by information contained in this document and Shell's POC. Shell has adopted a spatial and temporal strategy for its Chukchi Sea open-water marine surveys that should minimize impacts to subsistence hunters. Due to the timing of the project and the distance from the surrounding communities (the proposed site clearance and shallow hazards surveys and equipment recovery and maintenance activities would be approximately 120 km to Wainwright and 150 km to Point Lay), it is anticipated to have no effects on spring harvesting and little or no effects on the occasional summer harvest of beluga whale, subsistence seal hunts (ringed and spotted seals are primarily harvested in winter while bearded seals are hunted during July-September in the Beaufort Sea), or the fall bowhead hunt.

## Endangered Species Act (ESA)

The bowhead, fin, and humpback whales and ringed and bearded seals are the only marine mammal species currently listed as endangered or threatened under the ESA that could occur during Shell's proposed marine surveys during the Arctic open-water season. NMFS' Permits and Conservation Division consulted with NMFS' Alaska Regional Office Division of Protected Resources under section 7 of the ESA on the issuance of an IHA to Shell under section 101(a)(5)(D) of the MMPA for this activity. A Biological Opinion was issued on June 19, 2013, which concludes that issuance of the IHA is not likely to jeopardize the continued existence of the ESA-listed marine mammal species. NMFS will issue an Incidental Take Statement under this Biological Opinion which contains reasonable and prudent measures with implementing terms and conditions to minimize the effects of take of listed species.

## National Environmental Policy Act (NEPA)

NMFS prepared an EA that includes an analysis of potential environmental effects associated with NMFS' issuance of an IHA to Shell to take marine mammals incidental to conducting its marine surveys in the Chukchi Sea during the 2013 open-water season. NMFS has finalized the EA and prepared a FONSI for this action. Therefore, preparation of an EIS is not necessary.

## Authorization

As a result of these determinations, NMFS has issued an IHA to Shell to take marine mammals incidental to its 2013 marine survey in the Chukchi Sea, Alaska, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: July 30, 2013.

**Donna S. Wieting,**

*Director, Office of Protected Resources, National Marine Fisheries Service.*

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