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# Contents

**Federal Register**

Vol. 78, No. 180

Tuesday, September 17, 2013

**Actuaries, Joint Board for Enrollment**
*See* Joint Board for Enrollment of Actuaries

**Agency for Healthcare Research and Quality**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 57157–57159
Scientific Information Requests:
Medication Therapy Management, 57159–57161

**Agricultural Marketing Service**
RULES
United States Standards for Condition of Food Containers, 57033–57047
PROPOSED RULES
Increased Assessment Rates:
Avocados Grown in South Florida, 57099–57101
Walnuts Grown in California, 57101–57104

**Agriculture Department**
*See* Agricultural Marketing Service
*See* Food and Nutrition Service
*See* Forest Service

**Army Department**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 57133–57134
Meetings:
Advisory Committee on Arlington National Cemetery, 57134

**Census Bureau**
NOTICES
Meetings:
Census Advisory Committees, 57128–57129

**Centers for Disease Control and Prevention**
NOTICES
Meetings:
Community Preventive Services Task Force, 57161–57162

**Centers for Medicare & Medicaid Services**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 57162–57164

**Coast Guard**
RULES
Special Local Regulations:
Jacksonville Dragon Boat Festival; St. Johns River; Jacksonville, FL, 57063–57066
Red Bull Flugtag Miami, Biscayne Bay; Miami, FL, 57061–57063

**Commerce Department**
*See* Census Bureau
*See* Economic Development Administration
*See* International Trade Administration
*See* National Oceanic and Atmospheric Administration

**Defense Department**
*See* Army Department
RULES
Vet Center Services, 57067–57073

**Drug Enforcement Administration**
NOTICES
Importers of Controlled Substances; Applications:
Cerilliant Corp., 57176–57177

**Economic Development Administration**
NOTICES
Trade Adjustment Assistance; Petitions, 57129

**Education Department**
RULES
Final Waivers and Extensions of Project Periods:
American Indian Vocational Rehabilitation Services Program, 57066–57067
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Impact Aid Program Application for Section 8003 Assistance, 57135
Meetings:
National Board for Education Sciences, 57136–57137
President's Board of Advisors on Historically Black Colleges and Universities, 57135–57136

**Energy Department**
*See* Energy Efficiency and Renewable Energy Office
*See* Federal Energy Regulatory Commission

**Energy Efficiency and Renewable Energy Office**
NOTICES
Energy Efficiency Program for Industrial Equipment:
UL Verification Services Inc.; Determination Classifying as Nationally Recognized Certification Program for Small Electric Motors, 57137–57139
Waivers:
Panasonic Appliances Refrigeration Systems Corp. of America; Residential Refrigerator and Refrigerator–Freezer Test Procedures, 57139–57141
Samsung Electronics America, Inc.; Residential Refrigerator and Refrigerator–Freezer Test Procedures, 57141–57145

**Environmental Protection Agency**
RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
Washington; Puget Sound Clean Air Agency Regulatory Updates, 57073–57075
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 57150–57153
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
NOx Budget Trading Program to Reduce Regional Transport of Ozone, 57153–57154

**Executive Office of the President**
*See* Presidential Documents

**Federal Aviation Administration**
RULES
Airworthiness Directives:
Eurocopter France Helicopters, 57047–57049
The Boeing Company Airplanes, 57049–57057
PROPOSED RULES
Airworthiness Directives:
Diamond Aircraft Industries Airplanes, 57104–57105
NOTICES
Passenger Facility Charge Approvals and Disapprovals, 57205–57215
Waivers of Claims Agreements:
Orbital Sciences Corp., 57215–57216

**Federal Energy Regulatory Commission**
NOTICES
Combined Filings, 57145–57148
Initiation of Proceeding and Refund Effective Date:
Midcontinent Independent System Operator, Inc., 57149
Preliminary Permit Applications:
Western Minnesota Municipal Power Agency; Lock+ Hydro Friends Fund III, LLC, 57149

**Federal Reserve System**
NOTICES
Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 57154

**Federal Retirement Thrift Investment Board**
NOTICES
Meetings; Sunshine Act, 57154

**Federal Trade Commission**
NOTICES
Granting of Request for Early Termination of the Waiting Period under the Premerger Notification Rules, 57154–57156

**Fish and Wildlife Service**
RULES
Endangered and Threatened Wildlife and Plants:
Endangered Status for the Neosho Mucket and Threatened Status for the Rabbitsfoot, 57076–57097
NOTICES
Endangered and Threatened Wildlife and Plants Recovery Permit Applications, 57170–57171
Environmental Impact Statements; Availability, etc.:
Experimental Removal of Barred Owls to Benefit Threatened Northern Spotted Owls, 57171–57173

**Food and Drug Administration**
RULES
Oral Dosage Form New Animal Drugs:
Amprolium; Meloxicam, 57057–57058
PROPOSED RULES
Color Additive Petitions:
Wm. Wrigley Jr. Co., 57105–57106
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Applications for Approval to Market a New Drug; Patent Submission and Listing Requirements, 57164–57166
Meetings:
Antiviral Drugs Advisory Committee, 57166

**Food and Nutrition Service**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Supplemental Nutrition Assistance Program, 57127–57128

**Forest Service**
NOTICES
Meetings:
Forest Resource Coordinating Committee, 57128

**General Services Administration**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Acquisition Regulation; Modifications (Federal Supply Schedules), 57156–57157

**Health and Human Services Department**
*See* Agency for Healthcare Research and Quality
*See* Centers for Disease Control and Prevention
*See* Centers for Medicare & Medicaid Services
*See* Food and Drug Administration
*See* National Institutes of Health

**Healthcare Research and Quality Agency**
*See* Agency for Healthcare Research and Quality

**Homeland Security Department**
*See* Coast Guard

**Housing and Urban Development Department**
RULES
Federal Housing Administration Approval of Lending Institutions and Mortgagees:
Streamlined Reporting Requirements for Small Supervised Lenders and Mortgagees, 57058–57061

**Interior Department**
*See* Fish and Wildlife Service
*See* Land Management Bureau

**Internal Revenue Service**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 57218–57221

**International Trade Administration**
NOTICES
Antidumping and Countervailing Duty Orders; Results, Extensions, Amendments, etc.:
Pasta from Italy and Turkey, 57129–57130

**International Trade Commission**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Digital Trade in the U.S. and Global Economies, Part 2, 57174

**Joint Board for Enrollment of Actuaries**
NOTICES
Meetings:
Advisory Committee on Actuarial Examinations, 57174–57175

**Justice Department**
*See* Drug Enforcement Administration

*See* Justice Programs Office
**NOTICES**
Consent Decrees under the Clean Air Act, 57175
Proposed Consent Decrees under CERCLA, 57175–57176
Proposed Consent Decrees under the Clean Water Act, 57176

**Justice Programs Office**
**NOTICES**
Meetings:
Global Justice Information Sharing Initiative Federal Advisory Committee, 57178
Science Advisory Board, 57177

**Land Management Bureau**
**NOTICES**
Records of Decision:
Mohave County Wind Farm Project, Mohave County, AZ, 57173–57174

**Legal Services Corporation**
**NOTICES**
Meetings; Sunshine Act, 57178

**National Aeronautics and Space Administration**
**NOTICES**
Meetings:
Applied Sciences Advisory Committee, 57178–57179

**National Archives and Records Administration**
**NOTICES**
Records Schedules, 57179–57180

**National Highway Traffic Safety Administration**
**NOTICES**
Petitions for Decisions of Inconsequential Noncompliance:
General Motors, LLC, 57216–57218

**National Institutes of Health**
**NOTICES**
Meetings:
Center for Scientific Review, 57168–57170
National Heart, Lung, and Blood Institute, 57168
National Institute on Aging, 57167
National Institute on Deafness and Other Communication Disorders, 57167–57168
National Institute on Drug Abuse, 57166–57167

**National Oceanic and Atmospheric Administration**
**RULES**
Fisheries of the Exclusive Economic Zone Off Alaska:
Pollock in Statistical Area 620 in the Gulf of Alaska; Closure, 57097
Sharks in the Bering Sea and Aleutian Islands Management Area; Closure, 57097–57098
**PROPOSED RULES**
Fisheries of the Exclusive Economic Zone Off Alaska:
Groundfish of the Gulf of Alaska; Amendment 95 to the Fishery Management Plan for Groundfish, 57106–57126
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Conflict of Interest Disclosure for Nonfederal Government Individuals Who Are Candidates to Conduct Peer Reviews, 57130–57131
Membership of the NOAA Performance Review Board, 57131–57132
Permits:
Endangered Species; File No. 16230, 57132–57133
Marine Mammals; File No. 14514, 57133

**National Science Foundation**
**NOTICES**
Antarctic Conservation Act Permit Applications, 57180

**Nuclear Regulatory Commission**
**NOTICES**
Facility Operating and Combined Licenses:
Applications and Amendments Involving No Significant Hazards Considerations, 57180–57186

**Presidential Documents**
**ADMINISTRATIVE ORDERS**
Trading With the Enemy Act; Continuation of Certain Authorities (Presidential Determination)
No. 2013–13 of September 12, 2013, 57223–57225

**Securities and Exchange Commission**
**NOTICES**
Self-Regulatory Organizations; Proposed Rule Changes:
BOX Options Exchange, LLC, 57191–57195
C2 Options Exchange, Inc, 57195–57198
NASDAQ OMX PHLX, LLC, 57203–57205
NYSE Arca, Inc., 57186–57191
NYSE MKT, LLC, 57198–57203

**Transportation Department**
*See* Federal Aviation Administration
*See* National Highway Traffic Safety Administration

**Treasury Department**
*See* Internal Revenue Service
*See* United States Mint

**United States Mint**
**NOTICES**
Meetings:
Citizens Coinage Advisory Committee, 57221

**Veterans Affairs Department**
**RULES**
Vet Center Services, 57067–57073

---

**Separate Parts In This Issue**

**Part II**
Presidential Documents, 57223–57225

---

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

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## CFR PARTS AFFECTED IN THIS ISSUE

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

**3 CFR**
**Administrative Orders:**
Presidential Determinations:
No. 2013–13 of September 12, 2013 .....57225

**7 CFR**
42.....57033
**Proposed Rules:**
915.....57099
984.....57101

**14 CFR**
39 (3 documents) .....57047, 57049, 57053
**Proposed Rules:**
39.....57104

**21 CFR**
520.....57057
**Proposed Rules:**
73.....57105

**24 CFR**
5.....57058
202.....57058

**33 CFR**
100 (2 documents) .....57061, 57063

**34 CFR**
75.....57066
371.....57066

**38 CFR**
17.....57067

**40 CFR**
52.....57073

**50 CFR**
17.....57076
679 (2 documents) .....57097
**Proposed Rules:**
679.....57106

# Rules and Regulations

Federal Register

Vol. 78, No. 180

Tuesday, September 17, 2013

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

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 42

**[Doc. No. AMS–FV–08–0027; FV–05–332]**

**RIN 0581–AC52**

## United States Standards for Condition of Food Containers

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Agricultural Marketing Service (AMS) is amending the regulations governing the United States (U.S.) Standards for Condition of Food Containers. The revisions to existing tables, removal of operating characteristic (OC) curves and updating language in the standards would enable the standards to be applicable to most types of food containers and align the standards to reflect current industry practices.

**DATES:** *Effective Date:* October 17, 2013.

**FOR FURTHER INFORMATION CONTACT:** Lynne Yedinak, Specialty Crops Inspection Division, Fruit and Vegetable Program, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue SW., Room 1536, South Building, Stop 0240, Washington, DC 20250–0240; Telephone: (202) 720–5021, FAX: (202) 690–1527; or email *CIDS@ams.usda.gov*.

**SUPPLEMENTARY INFORMATION:**

### Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866 and therefore, has not been reviewed by the Office of Management and Budget.

### Regulatory Flexibility Act and Paperwork Reduction Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions so that small businesses will not be unduly or disproportionately burdened. Food manufacturers are determined to be small businesses in accordance with the Small Business Size Standards by North American Industry Classification Systems (NAICS) codes in Title 13, Code of Federal Regulations (CFR) 13 CFR part 121. These businesses may have fewer than 500, 750, or 1,000 employees depending on their NAICS code.

There are approximately 22,058 establishments identified in the 2007 Economic Census as belonging to the North American Industry Classification System under the classification of ''food manufacturing'' and any number of these establishments could request their product containers be inspected under the provisions of the U.S. Standards for Condition of Food Containers. Only 402 of these establishments would qualify as small businesses under the definition provided by the Small Business Administration.

Under the final rule, utilization of the U.S. Standards for Condition of Food Containers continues to be voluntary. We have examined the economic implications of this final rule on small entities. Small entities would only incur direct costs when purchasers of their packaged food products stipulate in their procurement documents that the food containers should conform to the requirements of the U.S. Standards for Condition of Food Containers.

Since the standards were last amended in May 1983, innovations in packaging technologies have provided an increasingly wide variety of acceptable new food containers. Accordingly, we believe that the economic impact of this final rule will be minimal because the revisions are necessary in order to provide standards that reflect current industry practices. The changes concerning removal of OC curves and other non-substantive changes will have no adverse impact on small or large entities.

The revisions made herein enable the standards to be applicable to most types of food containers and align the standards to reflect current industry practices. With regard to alternatives, this action reflects revisions proposed to the standards as a result of the second proposed rule published in the **Federal Register**, January 18, 2012 [77 FR 2481].

This rule will not impose any additional reporting or recordkeeping requirements on either small or large establishments under the Paperwork Reduction Act, (44 U.S.C. chapter 35). The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with the Standards.

AMS is committed to complying with the E-Government Act of 2002 (44 U.S.C. 3601–3606; 3541–3549), to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

### Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not retroactive. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

### Background

The U.S. Standards for Condition of Food Containers (Standards) currently provides sampling procedures and acceptance criteria for the inspection of stationary lots of filled food containers, which includes skip lot sampling and inspection procedures. It also provides on-line sampling and inspection procedures for food containers during production.

Stationary lot sampling is the process of randomly selecting sample units from a lot whose production has been completed. This type of lot is usually stored in a warehouse or in some other storage facility and is offered for inspection.

Skip lot sampling is a special procedure for inspecting stationary lots in which only a fraction of the submitted lots are inspected. Skip lot inspection can only be instituted when a certain number of lots of essentially

the same quality have been consecutively accepted.

To be acceptable under the examination criteria in the standards, lots may contain only a limited number of defects classified as minor, major, or critical. Acceptance criteria are based on sampling plans for different lot sizes and levels of inspection such as normal, reduced, or tightened. Defect tables classify the severity of defects.

On-line sampling and inspection is a procedure in which subgroups of sample units or individual containers are selected randomly from pre-designated portions of production. The acceptability of these portions of production is determined by inspecting, at the time of sampling, the subgroups which represent these portions. For this type of sampling, only portions of a lot, rather than a whole lot, may be rejected. This helps to identify trouble spots in a production cycle quickly, and enables the producer to make timely corrections. This can reduce the corrective action costs and the amount of product destroyed as a result of packaging problems.

These standards were developed for use by Government agencies when requested to certify filled primary containers or shipping cases, or both, for condition. The standards are permissive, and they may be used in their entirety or in part by private parties.

Revision of the Standards includes:

(1) separating Tables I, I–A, II, II–A, III, III–A, and III–B of sampling plans for normal, tightened, and reduced inspection by the type of sampling plan used (single or double), as well as updating the Acceptable Quality Levels (AQLs) for these tables

(2) updating Table IV—Metal Containers, (Rigid and Semi-Rigid), Table VI—Glass Containers, Table VIII—Rigid and Semi-Rigid Containers (Corrugated or Solid Fiberboard, Chipboard, Wood, Paperboard Aseptic Cartons, Polymeric Trays, etc.), Table IX—Flexible Containers (Plastic Bags, Cello, Paper, Textile, Laminated Multi-Layer Pouch, Bag, etc.), and Table XI—Defects of Label, Marking, or Code to incorporate new defects and revise existing defects to reflect new packaging technologies such as aseptic packaging, metal cans with easy open lids, and plastic rings that hold several containers together

(3) adding new defect tables, Table V—Composite Containers (Semi-Rigid Laminated or Multi-Layer Paperboard Body with Metal, Plastic, or Combination of Metal and Plastic Ends and a Safety Seal Inside the Cap), Table VII—Plastic Containers (Rigid and Semi-Rigid Bottles, Jars, Tubs, Trays, Pails, etc.), and Table XII—Interior Can Defects (a new section 42.114 is added to provide for procedures for evaluating interior container defects)

(4) removing the OC curves

(5) other minor non-substantive changes to clarify the text.

These revisions to existing tables, addition of new tables, removal of OC curves, and updating language in the U.S. Standards for Condition of Food Containers enables the standards to be applicable to most types of food containers and align the standards to reflect current industry practices.

OC curves found in §§ 42.140, 42.141, 42.142, and 42.143 from Subpart E—Miscellaneous, are removed. This final rule reflects the amendatory language removing these provisions that first appeared in the proposed rule published in the November 19, 2009, **Federal Register**. While these curves show the ability of the various sampling plans to distinguish between accepted and rejected lots, it is our experience that the inclusion of these curves is not critical to use of the standards. Furthermore, they are readily available in literature and on the Internet. Also, Standards for sampling plans including OC Curves are currently available in 7 CFR Part 43.

**Comments**

AMS published two proposed rules in the **Federal Register** in which six comments were received. The first proposed rule was published in the **Federal Register** on November 19, 2009 [74 FR 59920], with a sixty-day comment period which closed on January 19, 2010. Two comments were received. One commenter provided a comment that was determined to be outside the scope of the rule. Therefore, no changes were made based on this comment. The other commenter supported the proposed rule revision and provided statements regarding § 42.112—Defects of Containers. The commenter stated that while Table IV of § 42.112 has defects for composite cans listed as a subset of the metal can defects, composite cans also exhibit defects listed in Table VI—Rigid and Semi-rigid containers. The commenter proposed a separate table be added for composite cans extracting the composite can defects from Table IV and Table VI. Based on this comment, AMS added a new Table V that contained the information for composite can defects from Table IV and Table VI and removed the composite information in Table IV. The proposed rule was then reissued.

The second proposed rule was published in the **Federal Register** on January 18, 2012 [77 FR 2481] and provided a comment period of sixty days which closed on March 19, 2012. Four comments were received. Two commenters provided comments that were determined to be outside the scope of the rule. Therefore, no changes were made based on those comments.

The third commenter supported the revision of the proposed rule with several changes. Comments were received regarding: (1) the new proposed paragraph § 42.114—Procedures for Evaluating Interior Container Defects and Table XII—Interior Container Defects, and (2) the proposed modifications to two defects in Table IV—Metal Containers (Rigid and Semi-rigid). Comments received regarding Procedures for Evaluating Interior Container Defects stated that the last four defects in Table XII were vague and not defined. AMS determined the comment had merit and removed major defect 104 and minor defect 204, and revised major defect 105 and minor defect 205 to provide examples of what ''other anomaly(ies)'' are. The defects were then renumbered. In subsequent discussions, the commenter requested AMS change ''Enamel cracked in metal container material not affecting usability'' in minor defect 203, Table XII, to ''Enamel breakdown in metal affecting usability'' as the terms ''cracked'' and ''breakdown'' mean the same thing. AMS determined that this had merit and made the change. The commenter also provided comments on § 42.112—Defects of Containers, Table IV—Rigid and Semi-Rigid Containers. The comment concerned major defect 107 for ''Metal pop-top: (b) Missing or incomplete score line:'' and minor defect 203 for ''Flexible pop-top: (b) Short pull tab.'' The commenter stated that sometimes product design standards request a partial score for a metal pop-top or a shortened pull tab for a flexible pop-top. The commenter requested that AMS revise the defect descriptions to specify that these will not be considered defects when they are requested in a product specification. AMS determined the comment had merit and, to account for this exception, added the phrase ''(not conforming to a relevant product specification)'' to major defect 107 and minor defect 203.

The fourth commenter stated that using ''Tetra Pak'' is a reference to a company and not the actual type of packaging. The commenter recommended that AMS use one of the specific package trademarks or use the term ''Tetra Pak cartons.'' AMS determined the comment had merit.

AMS has revised the package identification from ''Tetra Pak'' to ''Paperboard Aseptic Cartons'' to accurately identify all packaging made in a similar manner.

Based on the comments received and information gathered, AMS believes that revising these standards will bring the Standards inline to reflect current industry practices.

**List of Subjects in 7 CFR Part 42**

Food packaging, reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 42 is amended as follows:

## PART 42—[Amended]

■ 1. The authority citation for part 42 continues to read as follows:

**Authority:** Secs. 203, 205, 60 Stat. 1087, as amended, 1090, as amended (7 U.S.C. 1622, 1624).

■ 2. Section 42.102 is amended by:

■ a. Removing the definitions ''Lot'', ''Operating Characteristic Curve (OC Curve)'' and ''Probability of acceptance''.

■ b. Revising the definitions ''Administrator,'' ''Sample size (n),'' and ''Stationary lot sampling''

■ c. Adding the definition ''Lot or inspection lot'' in alphabetical order.

The revisions and addition read as follows:

**§ 42.102 Definitions, general.**

* * * * *

*Administrator.* The Administrator of the Agricultural Marketing Service (AMS) of the Department or any other officer or employee of the Agency who is delegated, or who may be delegated the authority to act in the Administrator's stead.

* * * * *

*Lot or inspection lot.* A collection of filled food containers of the same size, type, and style. The term shall mean ''inspection lot,'' i.e., a collection of units of product from which a sample is to be drawn and inspected to determine conformance with the applicable acceptance criteria. An inspection lot may differ from a collection of units designated as a lot for other purposes (e.g., production lot, shipping lot, etc.).

* * * * *

*Sample size (n).* The number of sample units included in the sample.

* * * * *

*Stationary lot sampling.* The process of randomly selecting sample units from a lot whose production has been completed. This type of lot is usually stored in a warehouse or in some other storage facility and is offered in its entirety for inspection.

* * * * *

**§ 42.106 [Amended]**

■ 3. In § 42.106, paragraph (a)(1), remove the word ''attributed'' and add in its place the word ''attributed''.

■ 4. Revise § 42.109, to read as follows:

**§ 42.109 Sampling plans for normal condition of container inspection, Tables I and I–A.**

TABLE I—SINGLE SAMPLING PLANS FOR NORMAL CONDITION OF CONTAINER INSPECTION

| Code | Lot size ranges—Number of containers in lot | Type of Plan | Acceptable quality levels | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | Origin Inspection | | | | | | Other Than Origin Inspection | | | | | |
| | | | Sample size | 0.25 | | 1.5 | | 6.5 | | 0.25 | | 2.5 | | 10.0 | |
| | | | | Ac | Re | Ac | Re | Ac | Re | Ac | Re | Ac | Re | Ac | Re |
| CA | 6,000 or less | Single | 84 | 0 | 1 | 3 | 4 | 9 | 10 | 0 | 1 | 4 | 5 | 13 | 14 |
| CB | 6,001–12,000 | Single | 168 | 1 | 2 | 5 | 6 | 16 | 17 | 1 | 2 | 7 | 8 | 23 | 24 |
| CC | 12,001–36,000 | Single | 315 | 2 | 3 | 8 | 9 | 28 | 29 | 2 | 3 | 13 | 14 | 41 | 42 |
| CD | Over 36,000 | Single | 500 | 3 | 4 | 12 | 13 | 42 | 43 | 3 | 4 | 18 | 19 | 62 | 63 |
| CE | | Single | 800 | 4 | 5 | 18 | 19 | 64 | 65 | 4 | 5 | 27 | 28 | 95 | 96 |

Ac = Acceptance number.
Re = Rejection number.

Table I-A--Double Sampling Plans for
Normal Condition of Container Inspection

| Code | Lot size --ranges Number of containers in lot | Type of Plan | Sample Size | | Acceptable quality levels | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | Origin Inspection | | | | | | Other Than Origin Inspection | | | | | |
| | | | | | 0.25 | | 1.5 | | 6.5 | | 0.25 | | 2.5 | | 10.0 | |
| | | | | | Ac | Re | Ac | Re | Ac | Re | Ac | Re | Ac | Re | Ac | Re |
| CA | 6,000 or less--- | Double----- | 1st-------- | 36 | (*) | (*) | 0 | 4 | 2 | 7 | (*) | (*) | 0 | 4 | 3 | 9 |
| | | | 2d--------- | 60 | | | | | | | | | | | | |
| | | | Total------ | 96 | (*) | (*) | 3 | 4 | 10 | 11 | (*) | (*) | 4 | 5 | 15 | 16 |
| CB | 6,001-12,000---- | Double------ | 1st-------- | 120 | 0 | 2 | 2 | 6 | 10 | 14 | 0 | 2 | 3 | 7 | 14 | 19 |
| | | | 2d--------- | 60 | | | | | | | | | | | | |
| | | | Total------ | 180 | 1 | 2 | 5 | 6 | 17 | 18 | 1 | 2 | 8 | 9 | 25 | 26 |
| CC | 12,001-36,000--- | Double------ | 1st-------- | 168 | 0 | 3 | 2 | 7 | 12 | 18 | 0 | 3 | 5 | 10 | 19 | 26 |
| | | | 2d--------- | 180 | | | | | | | | | | | | |
| | | | Total------ | 348 | 2 | 3 | 9 | 10 | 31 | 32 | 2 | 3 | 14 | 15 | 45 | 46 |
| CD | Over 36,000----- | Double------ | 1st-------- | 228 | 0 | 3 | 3 | 9 | 15 | 24 | 0 | 3 | 5 | 11 | 23 | 34 |
| | | | 2d--------- | 288 | | | | | | | | | | | | |
| | | | Total------ | 516 | 3 | 4 | 12 | 13 | 43 | 44 | 3 | 4 | 19 | 20 | 64 | 65 |

(*) = Reject on one or more defects

■ 5. Revise § 42.110 to read as follows:

**§ 42.110 Sampling plans for tightened condition of container inspection; Tables II and II–A.**

TABLE II—SINGLE SAMPLING PLANS FOR TIGHTENED CONDITION OF CONTAINER INSPECTION

| Code | Lot size ranges—Number of containers in lot | Type of Plan | Sample Size | Acceptable quality levels | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | Origin Inspection | | | | | | Other Than Origin Inspection | | | | | |
| | | | | 0.25 | | 1.5 | | 6.5 | | 0.25 | | 2.5 | | 10.0 | |
| | | | | Ac | Re | Ac | Re | Ac | Re | Ac | Re | Ac | Re | Ac | Re |
| CB | 6,000 or less | Single | 168 | 0 | 1 | 4 | 5 | 11 | 12 | 0 | 1 | 5 | 6 | 16 | 17 |
| CC | 6,001–12,000 | Single | 315 | 1 | 2 | 6 | 7 | 19 | 20 | 1 | 2 | 8 | 9 | 28 | 29 |
| CD | 12,001–36,000 | Single | 500 | 2 | 3 | 9 | 10 | 28 | 29 | 2 | 3 | 12 | 13 | 42 | 43 |
| CE | Over 36,000 | Single | 800 | 3 | 4 | 13 | 14 | 42 | 43 | 3 | 4 | 18 | 19 | 64 | 65 |
| CF | | Single | 1,250 | 4 | 5 | 19 | 20 | 63 | 64 | 4 | 5 | 26 | 27 | 96 | 97 |

Table II-A—Double Sampling Plans for Tightened Condition of Container Inspection

| Code | Lot size ranges -- Number of containers in lot | Type of Plan | Sample Size | | Acceptable quality levels | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | Origin Inspection | | | | | | Other Than Origin Inspection | | | | | |
| | | | | | 0.25 | | 1.5 | | 6.5 | | 0.25 | | 2.5 | | 10.0 | |
| | | | | | Ac | Re | Ac | Re | Ac | Re | Ac | Re | Ac | Re | Ac | Re |
| CB | 6,000 or less------- | Double--- | 1st------- | 120 | (*) | (*) | 2 | 5 | 6 | 10 | (*) | (*) | 2 | 6 | 10 | 14 |
| | | | 2d-------- | 60 | | | | | | | | | | | | |
| | | | Total----- | 180 | (*) | (*) | 4 | 5 | 12 | 13 | (*) | (*) | 5 | 6 | 17 | 18 |
| CC | 6,001-12,000----- | Double--- | 1st------- | 168 | 0 | 2 | 1 | 5 | 7 | 13 | 0 | 2 | 2 | 7 | 12 | 18 |
| | | | 2d-------- | 180 | | | | | | | | | | | | |
| | | | Total----- | 348 | 1 | 2 | 7 | 8 | 21 | 22 | 1 | 2 | 9 | 10 | 31 | 32 |
| CD | 12,001-36,000----- | Double--- | 1st------- | 228 | 0 | 3 | 2 | 7 | 8 | 17 | 0 | 3 | 3 | 9 | 15 | 24 |
| | | | 2d-------- | 288 | | | | | | | | | | | | |
| | | | Total----- | 516 | 2 | 3 | 9 | 10 | 29 | 30 | 2 | 3 | 12 | 13 | 43 | 44 |
| CE | Over 36,000------ | Double--- | 1st------- | 456 | 0 | 4 | 5 | 10 | 21 | 28 | 0 | 4 | 8 | 13 | 32 | 41 |
| | | | 2d-------- | 408 | | | | | | | | | | | | |
| | | | Total----- | 864 | 3 | 4 | 14 | 15 | 44 | 45 | 3 | 4 | 19 | 20 | 69 | 70 |

(*) = Reject on one or more defects

■ 6. Revise § 42.111 to read as follows:

**§ 42.111 Sampling plans for reduced condition of container inspection, Tables III and III–A; and limit number for reduced inspection, Table III–B.**

TABLE III—SINGLE SAMPLING PLANS FOR REDUCED CONDITION OF CONTAINER INSPECTION

| Code | Lot size ranges—Number of containers in lot | Type of Plan | Acceptable quality levels | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | Origin inspection | | | | | | Other Than Origin Inspection | | | | | |
| | | | Sample Size | 0.25 | | 1.5 | | 6.5 | | 0.25 | | 2.5 | | 10.0 | |
| | | | | Ac | Re | Ac | Re | Ac | Re | Ac | Re | Ac | Re | Ac | Re |
| CAA | 6,000 or less | Single | 29 | 1 | 2 | 1 | 2 | 4 | 5 | 1 | 2 | 2 | 3 | 5 | 6 |
| CA | 6,001–36,000 | Single | 84 | 1 | 2 | 3 | 4 | 9 | 10 | 1 | 2 | 4 | 5 | 13 | 14 |
| CB | Over 36,000 | Single | 168 | 1 | 2 | 5 | 6 | 16 | 17 | 1 | 2 | 7 | 8 | 23 | 24 |
| CC | | Single | 315 | 2 | 3 | 8 | 9 | 28 | 29 | 2 | 3 | 13 | 14 | 41 | 42 |

Table III-A--Double Sampling Plans for Reduced Condition of Container Inspection

| Code | Lot size ranges -- Number of containers in lot | Type of Plan | Sample Size | | Acceptable quality levels | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | Origin Inspection | | | | | | Other Than Origin Inspection | | | | | |
| | | | | | 0.25 | | 1.5 | | 6.5 | | 0.25 | | 2.5 | | 10.0 | |
| | | | | | Ac | Re | Ac | Re | Ac | Re | Ac | Re | Ac | Re | Ac | Re |
| CAA | 6,000 or less-------- | Double---- | 1st-------- | 18 | 0 | 2 | 0 | 2 | 1 | 4 | 0 | 2 | 0 | 3 | 2 | 5 |
| | | | 2d--------- | 18 | | | | | | | | | | | | |
| | | | Total------ | 36 | 1 | 2 | 1 | 2 | 5 | 6 | 1 | 2 | 2 | 3 | 6 | 7 |
| CA | 6,001-36,000 | Double---- | 1st-------- | 36 | 0 | 2 | 0 | 4 | 2 | 7 | 0 | 2 | 0 | 4 | 3 | 9 |
| | | | 2d--------- | 60 | | | | | | | | | | | | |
| | | | Total------ | 96 | 1 | 2 | 3 | 4 | 10 | 11 | 1 | 2 | 4 | 5 | 15 | 16 |
| CB | Over 36,000- | Double---- | 1st-------- | 120 | 0 | 2 | 2 | 6 | 10 | 14 | 0 | 2 | 3 | 7 | 14 | 19 |
| | | | 2d--------- | 60 | | | | | | | | | | | | |
| | | | Total------ | 180 | 1 | 2 | 5 | 6 | 17 | 18 | 1 | 2 | 8 | 9 | 25 | 26 |

TABLE III–B—LIMIT NUMBERS FOR REDUCED INSPECTION

| Number of sample units from last 10 lots inspected within 6 months | Acceptable quality level | | | | |
|---|---|---|---|---|---|
| | 0.25 | 1.5 | 2.5 | 6.5 | 10.0 |
| 320–499 | (*) | 1 | 4 | 14 | 24 |
| 500–799 | (*) | 3 | 7 | 25 | 40 |
| 800–1,249 | 0 | 7 | 14 | 42 | 68 |
| 1,250–1,999 | 0 | 13 | 24 | 69 | 110 |
| 2,000–3,149 | 2 | 22 | 40 | 115 | 181 |
| 3,150–4,999 | 4 | 38 | 67 | 186 | 293 |
| 5,000–7,999 | 7 | 63 | 110 | 302 | 472 |
| 8,000–12,499 | 14 | 105 | 181 | 491 | 765 |
| 12,500–19,999 | 24 | 169 | 290 | 777 | 1207 |

* Denotes that the number of sample units from the last 10 inspection lots is not sufficient for reduced inspection for this AQL. In this instance more than 10 inspection lots may be used for the calculations if; the inspection lots used are the most recent ones in sequence within the last 6 months, they have all been on normal inspection, and none has been rejected on original inspection.

■ 7. Section § 42.112 is revised to read as follows:

**§ 42.112 Defects of containers: Tables IV, V, VI, VII, VIII, IX, and X.**

TABLE IV—METAL CONTAINERS

[Rigid and semi-rigid]

| Defects | Categories | | |
|---|---|---|---|
| | Critical | Major | Minor |
| Type or size of container or component parts not as specified | **None permitted** | | |
| Closure incomplete, not located correctly or not sealed, crimped, or fitted properly: | | | |
| (a) Heat processed primary container | 1 | | |
| (b) Non-heat processed primary container | | 101 | |
| (c) Other than primary container | | | 201 |
| Dirty, stained, or smeared container | | | 202 |
| Key opening metal containers (when required): | | | |
| (a) Key missing | | 102 | |
| (b) Key does not fit tab | | 103 | |
| (c) Tab of opening band insufficient to provide accessibility to key | | 104 | |
| (d) Improper scoring (band would not be removed in one continuous strip) | | 105 | |
| Metal pop-top: | | | |
| (a) Missing or broken pull tab | | 106 | |
| (b) Missing or incomplete score line (not conforming to a relevant product specification) | | 107 | |
| Flexible pop-top: | | | |
| (a) Poor seal (wrinkle, entrapped matter, etc.) | | 108 | |
| (b) Short pull tab (not conforming to a relevant product specification) | | | 203 |
| (c) Missing pull tab | | 109 | |
| (d) Torn pull tab | | | 204 |
| Open top with plastic overcap (when required): | | | |
| (a) Plastic overcap missing | | 110 | |
| (b) Plastic overcap warped (making opening or reapplication difficult) | | 111 | |
| Outside tinplate or coating (when required): | | | |
| (a) Missing or incomplete | | | 205 |
| (b) Blistered, flaked, sagged, or wrinkled | | | 206 |
| (c) Scratched or scored | | | 207 |
| (d) Fine cracks | | | 208 |
| Rust (rust stain confined to the top or bottom double seam or rust that can be removed with a soft cloth is not scored a defect): | | | |
| (a) Rust stain | | | 209 |
| (b) Pitted rust | | 112 | |
| Wet cans (excluding refrigerated containers) | | | 210 |
| Dent: | | | |
| (a) Materially affecting appearance but not usability | | | 211 |
| (b) Materially affecting usability | | 113 | |
| Buckle: | | | |
| (a) Not involving end seam | | | 212 |
| (b) Extending into the end seam | | 114 | |
| Collapsed container | | 115 | |
| Paneled side materially affecting appearance but not usability | | | 213 |
| Solder missing when required | | 116 | |
| Cable cut exposing seam | | 117 | |
| Improper side seam | | 118 | |
| Swell, springer, or flipper (not applicable to gas or pressure packed product nor frozen products) | 2 | | |

TABLE IV—METAL CONTAINERS—Continued

[Rigid and semi-rigid]

| Defects | Categories | | |
|---|---|---|---|
| | Critical | Major | Minor |
| Leaker or blown container | 3 | | |
| Frozen products only: | | | |
| (a) Bulging ends 3/16-inch to 1/4-inch beyond lip | | | 214 |
| (b) Bulging ends more than 1/4-inch beyond lip | | 119 | |
| Metal drums: leaking filling seal (bung) swell [1] | 4 | 120 | |

[1] Defect classification depends on the severity of the defect.

TABLE V—COMPOSITE CONTAINERS

[Fiberboard body with metal lids or metal bottoms, plastic or foil top with cap]

| Defects | Categories | | |
|---|---|---|---|
| | Critical | Major | Minor |
| Type or size of container or component parts not as specified | **None permitted** | | |
| Closure incomplete, not located correctly or not sealed, crimped, or fitted properly | 1 | | |
| Dirty, stained, or smeared container | | | 201 |
| Easy open closure: | | | |
| (a) Pull tab: | | | |
| 1. Missing or broken pull tab | | 101 | |
| 2. Missing or incomplete score line | | 102 | |
| (b) Membrane top: | | | |
| 1. Poor seal (wrinkle, entrapped matter, etc.) | | 103 | |
| 2. Short pull tab | | 104 | |
| 3. Missing pull tab | | 105 | |
| 4. Torn pull tab | | 106 | |
| (c) Open top with plastic overcap (when required): | | | |
| 1. Plastic overcap missing | | 107 | |
| 2. Plastic overcap warped (making opening or reapplication difficult) | | 108 | |
| Outside tinplate or coating on ends (when required): | | | |
| (a) Missing or incomplete | | | 202 |
| (b) Blistered, flaked, sagged, or wrinkled | | | 203 |
| (c) Scratched or scored | | | 204 |
| (d) Fine cracks | | | 205 |
| Collapsed container | | 109 | |
| Paneled side materially affecting appearance but not usability | | | 206 |
| Leaker | 2 | | |
| Wet or damp: | | | |
| (a) Materially affecting appearance but not usability | | | 207 |
| (b) Materially affecting usability | | 110 | |
| Crushed or torn area: | | | |
| (a) Materially affecting appearance but not usability | | | 208 |
| (b) Materially affecting usability | | 111 | |

TABLE VI—GLASS CONTAINERS

[Bottles, Jars]

| Defects | Categories | | |
|---|---|---|---|
| | Critical | Major | Minor |
| Type or size of container or component parts not as specified | **None permitted** | | |
| Closure not sealed, crimped, or fitted properly: | | | |
| (a) Heat processed | 1 | | |
| (b) Non-heat processed | | 101 | |
| Dirty, stained, or smeared container | | | 201 |
| Chip in glass | | | 202 |
| Stone (unmelted material) in glass | | | 203 |
| Pits in surface of glass | | | 204 |
| Sagging surface | | | 205 |
| Bead (bubble within glass): | | | |
| (a) 1/8-inch to 1/16-inch in diameter | | | 206 |
| (b) Exceeding 1/8-inch in diameter | | 102 | |
| Checked | | 103 | |
| Thin spot in glass | | 104 | |

TABLE VI—GLASS CONTAINERS—Continued

[Bottles, Jars]

| Defects | Categories | | |
|---|---|---|---|
| | Critical | Major | Minor |
| Blister (structural defect) | | 105 | |
| Bird swing (glass appendage inside container) | 2 | | |
| Broken or leaking container | 3 | | |
| Cap (nonheat processed): | | | |
| (a) Cross-threaded | | | 207 |
| (b) Loose but not leaking | | | 208 |
| (c) Pitted rust | | 106 | |
| Cap (heat processed): | | | |
| (a) Cross-threaded or loose | 4 | | |
| (b) Pitted rust | | 107 | |
| Sealing tape or cello band (when required): | | | |
| (a) Improperly placed | | | 209 |
| (b) Not covering juncture of cap and glass | | 108 | |
| (c) Ends overlap by less than ½-inch | | 109 | |
| (d) Loose or deteriorating | | 110 | |
| Missing or torn outer safety seal | | 111 | |
| Inner safety seal—missing, torn, poor seal | | 112 | |

TABLE VII—PLASTIC CONTAINERS

[Rigid and Semi-Rigid, Bottles, Jars, Tubs, Trays, Pails, etc.]

| Defects | Categories | | |
|---|---|---|---|
| | Critical | Major | Minor |
| Type or size of container or component parts not as specified | **None permitted** | | |
| Closure not sealed, crimped, or fitted properly: | | | |
| (a) Heat processed | 1 | | |
| (b) Non-heat processed | | 101 | |
| Dirty, stained, or smeared container | | | 201 |
| Chip in plastic | | | 202 |
| Un-melted gels in plastic | | | 203 |
| Pits in surface of plastic | | | 204 |
| Sagging surface | | | 205 |
| Air bubble within plastic: | | | |
| (a) ⅛-inch to 1/16-inch in diameter | | | 206 |
| (b) Exceeding ⅛-inch in diameter | | 102 | |
| Checked | | 103 | |
| Thin spot in plastic | | 104 | |
| Blister (structural defect) | | 105 | |
| Broken or leaking container | 2 | | |
| Cap (non-heat processed): | | | |
| (a) Cross-threaded | | | 207 |
| (b) Loose but not leaking | | | 208 |
| Cap (heat processed), cross-threaded or loose | 3 | | |
| Security seals: | | | |
| (a) Closure ring missing | | 106 | |
| (b) Missing or torn outer safety seal | | 107 | |
| (c) Inner safety seal—missing, torn, or poor seal | | 108 | |
| (d) Sealing tape or cello band (when required): | | | |
| 1. Improperly placed | | | 209 |
| 2. Not covering juncture of cap and plastic | | 109 | |
| 3. Ends overlap by less than ½-inch | | 110 | |
| 4. Loose or deteriorating | | 111 | |

TABLE VIII—RIGID AND SEMI-RIGID CONTAINERS—CORRUGATED OR SOLID FIBERBOARD, CHIPBOARD, WOOD, PAPERBOARD ASEPTIC CARTONS, POLYMERIC TRAYS, ETC.

[Excluding metal, glass, and plastic]

| Defects | Categories | | |
|---|---|---|---|
| | Critical | Major | Minor |
| Type or size of container or component parts not as specified | **None permitted** | | |
| Component part missing | | 101 | |
| Closure not sealed, crimped, or fitted properly: | | | |
| (a) Primary container | 1 | | |
| (b) Other than primary container | | | 201 |
| Dirty, stained, or smeared container | | | 202 |
| Wet or damp (excluding ice packs): | | | |
| (a) Materially affecting appearance but not usability | | | 203 |
| (b) Materially affecting usability | | 102 | |
| Moldy area | 2 | | |
| Crushed or torn area: | | | |
| (a) Materially affecting appearance but not usability | | | 204 |
| (b) Materially affecting usability | | 103 | |
| Separation of lamination (corrugated fiberboard): | | | |
| (a) Materially affecting appearance but not usability | | | 205 |
| (b) Materially affecting usability | | 104 | |
| Product sifting or leaking | | 105 | |
| Nails or staples (when required): | | | |
| (a) Not as required, insufficient number or improperly positioned | | | 206 |
| (b) Nails or staples protruding | | 106 | |
| Glue or adhesive (when required); not holding properly, not covering area specified, or not covering sufficient area to hold properly: | | | |
| (a) Primary container | | 107 | |
| (b) Other than primary container | | | 207 |
| Flap: | | | |
| (a) Projects beyond edge of container more than ¼-inch | | | 208 |
| (b) Does not meet properly, allowing space of more than ¼-inch | | | 209 |
| Sealing tape or strapping (when required): | | | |
| (a) Missing | | 108 | |
| (b) Improperly placed or applied | | | 210 |
| Missing component (straw, etc.) | | | 211 |
| Paperboard Aseptic Cartons: | | | |
| (a) Missing re-sealable cap or tab | | 109 | |
| (b) Inner or outer safety seal—missing, torn, poor seal | 3 | | |
| Thermostabilized polymeric trays: | | | |
| Tray body: | | | |
| (a) Swollen container | 4 | | |
| (b) Tear, crack, hole, abrasion through more than one layer of multi-layer laminate for the tray | 5 | | |
| (c) Presence of delamination in multi-layered laminate | | | 212 |
| (d) Presence of any permanent deformation, such that deformed area is discolored or roughened in texture | | | 213 |
| Lid material: | | | |
| (a) Closure seal not continuous along tray flange surface | 6 | | |
| (b) Foldover wrinkle in seal area extends into the closure seal such that the closure seal is reduced to less than ⅛-inch | 7 | | |
| (c) Any impression or design on the seal surfaces which conceals or impairs visual detection of seal defects | | 110 | |
| (d) Areas of "wave-like" striations or wrinkles along the seal area that spans the entire width of seal | | | 214 |
| (e) Abrasion of lid material: | | | |
| 1. Within 1/16-inch of food product edge of seal such that barrier layer is exposed | 8 | | |
| 2. Greater than 1/16-inch from food product edge of seal that barrier layer is exposed | | | 215 |
| (f) Presence of entrapped matter within 1/16-inch of the food product edge of seal or entrapped moisture or vapor with 1/16-inch of the food product edge of seal that results in less than 1/16-inch of defect free seal width at the outside edge | 9 | | |
| (g) Presence of any seal defect or anomaly (for example, entrapped moisture, gases, etc.) within 1/16-inch of food product edge of seal | | 111 | |
| (h) Closure seal width less than ⅛-inch | | | 216 |

TABLE IX—FLEXIBLE CONTAINERS

[Plastic, Cellophane, Paper, Textile, Laminated Multi-Layer Pouch, Bag, etc.]

| Defects | Categories | | |
|---|---|---|---|
| | Critical | Major | Minor |
| Type or size of container or component parts not as specified | **None permitted** | | |
| Closure not sealed, crimped, stitched, or fitted properly: | | | |
| (a) Heat processed primary container | 1 | | |
| (b) Non-heat processed primary container | | 101 | |
| (c) Other than primary container | | | 201 |
| Dirty, stained, or smeared container | | | 202 |
| Unmelted gels in plastic | | | 203 |
| Torn or cut container or abrasion (non-leaker): | | | |
| (a) Materially affecting appearance but not usability | | | 204 |
| (b) Materially affecting usability | | 102 | |
| Moldy area | 2 | | |
| Individual packages sticking together or to shipping case (tear when separated) | | 103 | |
| Not fully covering product | | 104 | |
| Wet or damp (excluding ice packs): | | | |
| (a) Materially affecting appearance but not usability | | | 205 |
| (b) Materially affecting usability | | 105 | |
| Over wrap (when required): | | | |
| (a) Missing | | 106 | |
| (b) Loose, not sealed, or closed | | | 206 |
| (c) Improperly applied | | | 207 |
| Sealing tape, strapping, or adhesives (when required): | | | |
| (a) Missing | | 107 | |
| (b) Improperly placed, applied, torn, or wrinkled | | | 208 |
| Tape over bottom and top closures (when required): | | | |
| (a) Not covering stitching | | 108 | |
| (b) Torn (exposing stitching) | | 109 | |
| (c) Wrinkled (exposing stitching) | | 110 | |
| (d) Not adhering to bag: | | | |
| 1. Exposing stitching | | 111 | |
| 2. Not exposing stitching | | | 209 |
| (e) Improper placement | | | 210 |
| Product sifting or leaking: | | | |
| (a) Non-heat processed | | 112 | |
| (b) Heat processed | 3 | | |
| Flexible pop-top: | | | |
| (a) Poor seal (wrinkle, entrapped matter, etc.) reducing intact seal to less than 1/16-inch | 4 | | |
| (b) Short pull tab (materially affecting usability) | | | 212 |
| (c) Missing pull tab | | 113 | |
| (d) Torn pull tab (materially affecting usability) | | | 213 |
| Missing component (straw, etc.) | | | 214 |
| Two part container (poly lined box or bag in box): | | | |
| (a) Outer case torn | | | 215 |
| (b) Poly liner: | | | |
| 1. Missing | 5 | | |
| 2. Improper closure | | 114 | |
| Missing "zip lock" (re-sealable containers) | | | 216 |
| Loss of vacuum (in vacuum-packed) | | 115 | |
| Pre-formed containers: | | | |
| (a) Dented or crushed area | | | 217 |
| (b) Deformed container | | | 218 |
| Missing re-sealable cap | | 116 | |
| Inner or outer safety seal—missing, torn, poor seal | 6 | | |
| Air bubble in plastic | | 117 | |
| Thermostabilized products (includes but not limited to tubes, pouches, etc.): | | | |
| Foldover wrinkle in seal area (thermostabilized pouches): | | | |
| (a) Extends through all plies across seal area or reduces seal less than 1/16-inch | 7 | | |
| (b) Does not extend through all plies and effective seal is 1/16-inch or greater | | | 219 |
| Incomplete seal (thermostabilized pouches) | 8 | | |
| Non-bonding seal (thermostabilized pouches) | 9 | | |
| Laminate separation in body of pouch or in seal within 1/16-inch of food product edge: | | | |
| (a) If food contact layer is exposed | 10 | | |
| (b) If food contact surface is exposed after manipulation or laminate separation expands after manipulation | | 118 | |
| (c) If lamination separation is limited to isolated spots that do not propagate with manipulation or is outer ply separation in seal within 1/16-inch of food product edge of seal | | | 220 |
| Flex cracks (cracks in foil layer only) | | | 221 |
| Swollen container | 11 | | |
| Blister (in seal) reducing intact seal to less than 1/16-inch | 12 | | |

TABLE IX—FLEXIBLE CONTAINERS—Continued

[Plastic, Cellophane, Paper, Textile, Laminated Multi-Layer Pouch, Bag, etc.]

| Defects | Categories | | |
|---|---|---|---|
| | Critical | Major | Minor |
| Compressed seal (overheated to bubble or expose inner layer) reducing intact seal to less than 1/16-inch | 13 | | |
| Stringy seal (excessive plastic threads showing at edge of seal area) | | | 222 |
| Contaminated seal (entrapped matter) reducing intact seal to less than 1/16-inch | 14 | | |
| Seal creep (product in pouch "creeping" into seal) reducing intact seal to less than 1/16 inch | 15 | | |
| Misaligned or crooked seal reducing intact seal to less than 1/16-inch | 16 | | |
| Seal formed greater than 1-inch from edge of pouch (unclosed edge flaps) | | | 223 |
| Waffling (embossing on surface from retort racks; not scorable unless severe) | | | 224 |
| Poor or missing tear notch (when required) | | | 225 |

TABLE X—UNITIZING

[Plastic or other type of casing/unitizing]

| Defects | Categories | |
|---|---|---|
| | Major | Minor |
| Not specified method | 101 | |
| Missing tray (when required) | 102 | |
| Missing shrink wrap (when required) | 103 | |
| Loose or improperly applied wrap | | 201 |
| Torn or mutilated | | 202 |
| Off-center wrap (does not overlap both ends) | | 203 |

■ 8. Section 42.113 is revised to read as follows:

**§ 42.113 Defects of label, marking, or code.**

TABLE XI—LABEL, MARKING, OR CODE

| Defects | Categories | |
|---|---|---|
| | Major | Minor |
| Not specified method | 101 | |
| Missing (when required) | 102 | |
| Loose or improperly applied | | 201 |
| Torn or mutilated | | 202 |
| Torn or scratched, obliterating any markings on the label | 103 | |
| Text illegible or incomplete | | 203 |
| Incorrect | 104 | |
| In wrong location | | 204 |

■ 9. Add § 42.114 to subpart B to read as follows:

**§ 42.114 Procedures for evaluating interior container defects.**

(a) Sections 42.101–42.136 provide procedures for determining lot conformance with the U.S. Standards for Condition of Food Containers. This determination is based on the examination of the external characteristics of the food containers.

(b) As an option, if a user of the inspection service requests to have the interior characteristics of containers examined, and apply these results in the determination of lot acceptability, the defects listed in Table XII may be used.

(c) The determination of lot acceptability based on internal container defects shall be independent of the determination of lot acceptability for U.S. Standards for Condition of Food Containers. A user of the inspection service may choose to require inspection for internal can defects as well as inspection for U.S. Standards for Condition of Food Containers.

(d) If a user of the inspection service requests an examination for internal container defects in addition to an official USDA/USDC inspection for product quality and/or U.S. grade, the containers opened by the official inspection service for inspection of product quality and/or U.S. grade will be used for examination of interior container defects. The minimum sample size for evaluation of interior container defects will be 13 containers. As a result, additional containers will be required if the inspection for quality or U.S. grade calls for fewer than 13 containers. Table XIII provides acceptance numbers for internal container defects for selected sample sizes.

TABLE XII—INTERIOR CONTAINER DEFECTS

| Defects | Categories | |
|---|---|---|
| | Major | Minor |
| De-tinning in metal container materially affecting usability | 101 | |
| De-tinning in metal container not materially affecting usability | | 201 |
| Black spots in metal container | | 202 |
| Enamel missing (when required) in metal container | 102 | |
| Enamel breakdown in metal container material affecting usability | 103 | |
| Enamel breakdown in metal container material not affecting usability | | 203 |
| Other defect(s) of the interior of the container (metal, plastic, paper, rigid, etc.) e.g., interior damage, tear, delamination, missing layer, off-odor, interior blisters, etc. that materially affects usability | 104 | |
| Defect(s) of the interior of the container (metal, plastic, paper, rigid, etc.) e.g., interior damage, tear, delamination, missing layer, off-odor, interior blisters, etc. that materially affects appearance but not usability | | 204 |

TABLE XIII—ACCEPTANCE NUMBERS FOR INTERNAL CONTAINER DEFECTS

| Sample Size (n = number of containers) | Major | | Total | |
|---|---|---|---|---|
| | Interior Defects | | Interior Defects | |
| | Ac | Re | Ac | Re |
| n—13 | 0 | 1 | 2 | 3 |
| n—21 | 1 | 2 | 3 | 4 |
| n—29 | 1 | 2 | 4 | 5 |
| n—38 | 2 | 3 | 5 | 6 |
| n—48 | 2 | 3 | 6 | 7 |
| n—60 | 2 | 3 | 7 | 8 |

Dated: September 11, 2013.

**Rex A. Barnes,**

*Associate Administrator, Agricultural Marketing Service.*

[FR Doc. 2013–22574 Filed 9–16–13; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2013–0119; Directorate Identifier 2011–SW–034–AD; Amendment 39–17541; AD 2013–16–03]**

**RIN 2120–AA64**

## Airworthiness Directives; Eurocopter France Helicopters

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for Eurocopter France (Eurocopter) Model AS350 and AS355 helicopters, to require inspecting for a crack in the control lever attachment yokes, and if needed, replacing the tail rotor gearbox (TGB). This AD is prompted by improper casting of TGB casing assemblies, which may lead to cracking. A crack in the control lever attachment yokes could cause a loss of tail rotor pitch control, and consequently, loss of control of the helicopter.

**DATES:** This AD is effective October 22, 2013.

The Director of the Federal Register approved the incorporation by reference of certain documents listed in this AD as of October 22, 2013.

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

### Examining the AD Docket

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

**FOR FURTHER INFORMATION CONTACT:** 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:**

### Discussion

On February 11, 2013, at 78 FR 9634, the **Federal Register** published our notice of proposed rulemaking (NPRM), which proposed to amend 14 CFR part 39 to include an AD that would apply to Eurocopter Model AS350 and AS355 helicopters. The NPRM proposed to require inspecting for a crack in the control lever attachment yokes, and if needed, replacing the TGB. The proposed requirements were intended to prevent a crack in the control lever attachment yokes, which could cause a loss of tail rotor pitch control, and consequently, loss of control of the helicopter.

The NPRM was prompted by AD No. 2011–0104, dated May 27, 2011, issued by the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, to correct an unsafe condition for the Eurocopter Model AS 350 and AS 355 helicopters. EASA advises that cracks were found on some TGB casing

assemblies when a dye-penetrant inspection was performed after the machining of the control lever attachment yokes. The inspection followed the repair of the manufacturing mold. EASA reports that cracks in the TGB casing assemblies, if not detected and corrected, could lead to a crack on the control lever attachment yokes, which could cause the loss of tail rotor pitch control and subsequent loss of control of the helicopter.

**Comments**

We gave the public the opportunity to participate in developing this AD, but we received no comments on the NPRM (78 FR 9634, February 11, 2013).

**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 the EASA AD. We are issuing 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 helicopters of these same type designs and that air safety and the public interest require adopting the AD requirements as proposed except the reference to the Aerospace Material Specification 2647 or equivalent has been removed and we are now incorporating by reference procedures for the Fluorescent Penetrant Inspection. These changes are consistent with the intent of the proposals in the NPRM (78 FR 9634, February 11, 2013) and will not increase the economic burden on any operator nor increase the scope of the AD.

**Differences Between This AD and the EASA AD**

We require inspecting for a crack in the attachment yokes of the TGB casing assemblies within 100 hours time-in-service (TIS). EASA requires that the inspection be conducted within 26 months or 660 flight hours if the TGB casing assemblies have less than 550 flight hours and within 110 flight hours or 13 months if the TGB casing assemblies have 550 or more flight hours. We do not include the Model AS350BB helicopter because it is not type certificated in the United States, but we do include models AS350C and AS350D1.

**Related Service Information**

Eurocopter issued Alert Service Bulletin (ASB) No. AS350–65.00.46 for Model AS350 helicopters and ASB AS355–65.00.22 for AS355 helicopters. Both ASBs are Revision 0 and dated May 18, 2011. The ASBs call for non-destructive inspections, such as a dye-penetrant inspection, to check for cracks in the attachment yokes of the TGB casing assemblies. If there is a crack, the ASBs call for replacing the TGB with an airworthy TGB and returning the replaced TGB to Eurocopter.

**Costs of Compliance**

We estimate that this AD affects 693 helicopters of U.S. Registry and that labor costs average $85 per work-hour. We estimate that it takes two work-hours to inspect TGB casing assemblies for a cost of $170 per helicopter, and $117,810 for the U.S. fleet. No parts are needed. Replacing the TGB requires five work hours for a labor cost of $425. Parts cost $37,825 for a total cost of $38,250 per helicopter.

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

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

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

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

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

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

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

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**2013–16–03 EUROCOPTER FRANCE HELICOPTERS (EUROCOPTER):** Amendment 39–17541; Docket No. FAA–2013–0119; Directorate Identifier 2011–SW–034–AD.

**(a) Applicability**

This AD applies to Eurocopter AS350C, D, D1, B, BA, B1, B2, and B3; and AS355E, F, F1, F2, N, and NP helicopters, with a tailrotor gearbox (TGB) casing assembly, part number (P/N) 350A33–1090–02 and serial number (S/N) MA47577, MA47585, MA47587 through MA47593, MA47597 through MA47600, MA47602, MA47604, MA47606, MA47610, MA47613, MA47615, MA47617, MA47619 through MA47624, MA47626, MA47628, or MA47631 installed, certificated in any category.

**(b) Unsafe Condition**

This AD defines the unsafe condition as a crack in the control lever attachment yoke of the TGB casing assembly, which could result in loss of tail rotor pitch control and loss of helicopter control.

**(c) Effective Date**

This AD becomes effective October 22, 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**

Within 100 hours time-in-service:

(1) Remove the control lever, as depicted in Figure 1, item (b), of Eurocopter Alert Service Bulletin (ASB) No. AS350–65.00.46

or No. AS355–65.00.22, both Revision 0 and both dated May 18, 2011, as applicable for your model helicopter.

(2) Strip the paint from the TGB control lever attachment yokes, as depicted in Figure 2, item (z), of the ASB No. AS350–65.00.46 or No. AS355–65.00.22, as applicable to your model helicopter.

(3) Perform a Fluorescent Penetrant Inspection (FPI) in accordance with paragraph 3.B.2 of ASB No. AS350–65.00.46 or No. AS355–65.00.22, as applicable to your model helicopter, on the TGB control lever attachment yokes for a crack. You are only required to follow the actions defined in this ASB paragraph pertaining to the FPI.

(4) If a crack exists, before further flight, replace the TGB with an airworthy TGB.

(5) If there is no crack, clean the inspected area and apply chemical conversion coating (Alodine 1200 or equivalent), Epoxy primer, and top coat paint.

**(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 817–222–5328; email *robert.grant@faa.gov*.

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

**(g) Additional Information**

The subject of this AD is addressed in European Aviation Safety Agency AD No. 2011–0104, dated May 27, 2011. You may view the EASA AD at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2013–0119.

**(h) Subject**

Joint Aircraft Service Component (JASC) Code: 6520, Tail Rotor Gearbox.

**(i) Material Incorporated by Reference**

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

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

(i) Eurocopter Alert Service Bulletin No. AS350–65.00.46, Revision 0, dated May 18, 2011.

(ii) Eurocopter Alert Service Bulletin No. AS355–65.00.22, Revision 0, May 18, 2011.

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

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

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

Issued in Fort Worth, Texas, on July 26, 2013.

**Kim Smith,**

*Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 2013–22295 Filed 9–16–13; 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–2013–0301; Directorate Identifier 2013–NM–025–AD; Amendment 39–17575; AD 2013–18–02]**

**RIN 2120–AA64**

## Airworthiness Directives; the Boeing Company Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 767–200, –300, –300F, and –400ER series airplanes. This AD was prompted by reports of cracked and corroded nuts on an outboard flap support rib. This AD requires, for certain airplanes, repetitive inspections of the cap seal for damaged sealant on nuts common to certain outboard flap support ribs, and related investigative and corrective actions if necessary. For certain other airplanes, this AD also requires repetitive inspections of the cap seal for damaged sealant on nuts common to certain outboard flap support ribs, related investigative and corrective actions if necessary, and if necessary, a detailed inspection to determine the nut type installed in the outboard flap support rib and corrective actions. This AD also provides terminating action for the repetitive inspections under certain conditions. We are issuing this AD to detect and correct cracked and corroded nuts and bolts and the installation of incorrect nuts on certain outboard flap support ribs, which could lead to additional nut and bolt damage in the joint, result in loss of an outboard flap, and adversely affect continued safe flight and landing of the airplane.

**DATES:** This AD is effective October 22, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of October 22, 2013.

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

### Examining the AD Docket

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

**FOR FURTHER INFORMATION CONTACT:** Berhane Alazar, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6577; fax: 425–917–6590; email: *berhane.alazar@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. The NPRM published in the **Federal Register** on April 10, 2013 (78 FR 21276). The NPRM proposed to require, for certain airplanes, repetitive inspections of the cap seal for damaged sealant on nuts common to certain outboard flap support ribs, related investigative and corrective actions if necessary, and replacement of all fasteners in the support ribs, which terminates the repetitive inspections. For certain other airplanes, the NPRM proposed to require repetitive

inspections of the cap seal for damaged sealant on nuts common to certain outboard flap support ribs, related investigative and corrective actions if necessary, and if necessary, a detailed inspection to determine the nut type installed in the outboard flap support rib and corrective actions. For those airplanes, the NPRM also proposed to provide for optional replacement of all fasteners in the support ribs, which would terminate the repetitive inspections.

**Comments**

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal (78 FR 21276, April 10, 2013) and the FAA's response to each comment.

**Request To Refer to Revised Service Information**

Japan Airlines, UPS, and Boeing stated that Boeing has issued revised service information and requested that the service information referenced in the NPRM (78 FR 21276, April 10, 2013) be updated to refer to Boeing Service Bulletin 767–57A0131, Revision 1, dated May 8, 2013.

We agree with the commenters' requests and have revised paragraphs (c), (g), (h), (i), and (j) of this final rule to include Boeing Service Bulletin 767–57A0131, Revision 1, dated May 8, 2013. We have also added a new paragraph (k) of this AD to provide credit for actions accomplished before the effective date of this AD using Boeing Alert Service Bulletin 767–57A0131, dated October 30, 2012, and reidentified the subsequent paragraphs.

**Clarification Regarding the Installation of Winglets**

Aviation Partners Boeing and UPS stated that the installation of winglets per Supplemental Type Certificate (STC) ST01920SE *(http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/59027f43b9a7486e86257b1d006591ee/$FILE/ST01920SE.pdf)* does not affect the accomplishment of the manufacturer's service instructions.

We agree with the commenters' statements that the installation of winglets as specified in STC ST01920SE (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/59027f43b9a7486e86257b1d006591ee/$FILE/ST01920SE.pdf*) does not affect accomplishment of the requirements of this AD, and for airplanes on which STC ST01920SE is installed, a ''change in product'' AMOC approval request is not necessary to comply with the requirements of section 39.17 of the Federal Aviation Regulations (14 CFR 39.17). We have added this provision in new paragraph (c)(2) of this final rule.

**Request To Correct a Reference to a Table Number**

UPS noted a typographical error in paragraph (h)(1)(i) of the NPRM (78 FR 21276, April 10, 2013). The inspection intervals are identified in table 2 of paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 767–57A0131, Revision 1, dated May 8, 2013, and the NPRM erroneously referred to table 1.

We agree there is an error and have revised paragraph (h)(1)(i) of this AD to refer to table 2 of paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 767–57A0131, Revision 1, dated May 8, 2013.

**Request To Clarify Terminating Action**

UPS noted that paragraph (i) of the NPRM (78 FR 21276, April 10, 2013) implies that the only terminating action for the repetitive inspections proposed by paragraph (h) of the NPRM is replacement of all fasteners within a support rib. UPS stated that the Boeing service information provides terminating action by replacing fasteners at all discrepant or corroded locations and/or the verification of correct nut type at all other locations. UPS requested that these corrective actions be identified as terminating action for the inspections proposed by paragraph (h) of the NPRM for the associated support rib.

We agree that clarification is needed regarding terminating action for the repetitive inspections required by paragraph (h) of this final rule. We have changed the header of paragraph (i) of this final rule to ''Terminating Action for Repetitive Inspections'' and split the paragraph into three subparagraphs. Paragraph (i)(1) of this final rule states that, if during any inspection required by paragraphs (g) or (h) of this AD, any cracking is found, all fasteners within a support rib must be replaced to terminate the repetitive inspections for that support rib only. New paragraph (i)(2) of this final rule states that if a discrepancy other than cracking is found (e.g., corrosion) during any inspection required by paragraph (g) of this final rule, all fasteners within a support rib must be replaced to terminate the repetitive inspections for that support rib only. New paragraph (i)(3) of this final rule states that if a discrepancy other than cracking is found (e.g., corrosion) during any inspection required by paragraph (h) of this final rule, replacing the affected fastener terminates the repetitive inspections for only that fastener within that support rib.

**Request To Combine Paragraphs (h)(1) and (h)(2) of the NPRM (78 FR 21276, April 10, 2013)**

UPS stated that the intent of paragraph (h) of the NPRM (78 FR 21276, April 10, 2013) is to identify the requirements of the initial inspection, and the intent of paragraphs (h)(1) and (h)(2) of the NPRM is to identify the requirements of the repetitive inspections based on the findings of the initial inspection. UPS stated that the investigative and corrective actions applicable to paragraph (h)(1) of the NPRM are the same as those in paragraph (h)(2) of the NPRM and suggested that these two paragraphs could be combined without affecting the intent of this AD.

We do not agree that paragraphs (h)(1) and (h)(2) of this final rule can be combined. Paragraph (h)(1) of this final rule describes actions based on the findings of the cap seal detailed inspections, and paragraph (h)(2) of this final rule addresses actions based on the findings of the inspections for the nuts, bolts, and washers on the support ribs. We have not changed this final rule in this regard.

**Request To Change Compliance Time for Initial Detailed Inspection**

UPS requested that the threshold for conducting the initial detailed inspection of the cap seal required by paragraphs (g) and (h) of the NPRM (78 FR 21276, April 10, 2013) be extended from 12 months to 24 months. UPS commented that if it is not possible to extend the threshold for the initial inspection, then the text should be revised to read ''12 months after the AD effective date or within the appropriate total years of aircraft service-life''—whichever occurs later. UPS requested this change to reflect the reported technical data as well as to give operators time to schedule the task at a facility capable of accomplishing the scope of the work.

We do not agree with UPS's request to extend the threshold for the initial detailed inspection. We have determined that the compliance time, as proposed, represents the maximum interval of time allowable for the affected airplanes to continue to safely operate before the initial inspection is done. Since maintenance schedules vary among operators, there would be no assurance that the airplane would be modified during that maximum interval. We have not changed this final rule in this regard.

Furthermore, we do not agree with UPS's request to revise the compliance time text to include ''or within the appropriate total years of aircraft service-life''—whichever occurs later. The installation of an incorrect nut during production, and the possibility of the nut cracking due to being overtorqued, is unrelated to the age of the airplane. We have not changed this final rule in this regard.

**Conclusion**

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

- Are consistent with the intent that was proposed in the NPRM (78 FR 21276, April 10, 2013) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (78 FR 21276, April 10, 2013).

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

**Costs of Compliance**

We estimate that this AD affects 440 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Detailed inspections | 1 work-hour × $85 per hour = $85 | $0 | $85 | $37,400 |
| Replacement of all fasteners (Group 1 airplanes). | 2 work-hours × $85 per hour = $170 | 2,553 | 2,723 | 1,198,120 |

We estimate the following costs to do any necessary related investigative and corrective actions and detailed inspections for nut type that would be required based on the results of the inspections. We have no way of determining the number of aircraft that might need these actions.

ON-CONDITION COSTS

| Action | Labor cost | Parts cost | Cost per product |
|---|---|---|---|
| Related investigative and corrective actions and detailed inspection for nut type. | Up to 3 work-hours × $85 per hour = $255 | $2,553 | Up to $2,808. |

According to the manufacturer, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

**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**

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

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

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

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

(3) Will not affect intrastate aviation in, and

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

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

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**2013–18–02 The Boeing Company:** Amendment 39–17575; Docket No. FAA–2013–0301; Directorate Identifier 2013–NM–025–AD.

**(a) Effective Date**

This AD is effective October 22, 2013.

**(b) Affected ADs**

None.

**(c) Applicability**

(1) This AD applies to The Boeing Company Model 767–200, 767–300, 767–300F, and 767–400ER series airplanes; certificated in any category; as identified in Boeing Service Bulletin 767–57A0131, Revision 1, dated May 8, 2013.

(2) Installation of Supplemental Type Certificate (STC) ST01920SE (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/59027f43b9a7486e86257b1d006591ee/*

*$FILE/ST01920SE.pdf)* does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST01920SE is installed, a ''change in product'' alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17.

**(d) Subject**

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 57, Wings.

**(e) Unsafe Condition**

This AD was prompted by reports of cracked and corroded nuts on an outboard flap support rib. We are issuing this AD to detect and correct cracked and corroded nuts and bolts and the installation of incorrect nuts on certain outboard flap support ribs, which could lead to additional nut and bolt damage in the joint, result in loss of an outboard flap, and adversely affect continued safe flight and landing of the airplane.

**(f) Compliance**

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

**(g) For Group 1 Airplanes: Repetitive Inspections of the Support Ribs, Related Investigative and Corrective Actions, and Fastener Replacement**

For Group 1 airplanes, as specified in Boeing Service Bulletin 767–57A0131, Revision 1, dated May 8, 2013: Except as required by paragraph (j) of this AD, at the time specified in table 1 of paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 767–57A0131, Revision 1, dated May 8, 2013, do a detailed inspection of the cap seal for damaged sealant on the nuts common to outboard flap support rib numbers 1, 2, 7, and 8, and do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767–57A0131, Revision 1, dated May 8, 2013. Do all applicable related investigative and corrective actions before further flight, except as specified in paragraphs (g)(1)(ii) and (g)(2)(ii) of this AD.

(1) If, during any detailed inspection of the cap seal required by paragraph (g) of this AD, no damaged sealant is found on any support rib, do the actions specified in paragraphs (g)(1)(i) and (g)(1)(ii) of this AD.

(i) Repeat the detailed inspection of the cap seal on that support rib thereafter at the intervals specified in table 1 of paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 767–57A0131, Revision 1, dated May 8, 2013, until all fasteners are replaced within that support rib as required by paragraph (g)(1)(ii) of this AD.

(ii) Except as required by paragraph (j) of this AD, at the time specified in table 1 of paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 767–57A0131, Revision 1, dated May 8, 2013: Replace all fasteners within the support rib, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767–57A0131, Revision 1, dated May 8, 2013.

(2) If, during any related investigative action required by paragraph (g) of this AD, no cracking and no corrosion is found on the nut, bolt, and washers of any support rib, do the actions specified in paragraphs (g)(2)(i) and (g)(2)(ii) of this AD.

(i) Repeat the detailed inspection of the cap seal on that support rib thereafter at the intervals specified in table 1 of paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 767–57A0131, Revision 1, dated May 8, 2013, until all fasteners are replaced within that support rib as required by paragraph (g)(2)(ii) of this AD.

(ii) Except as required by paragraph (j) of this AD, at the time specified in table 1 of paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 767–57A0131, Revision 1, dated May 8, 2013: Replace all fasteners within the support rib, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767–57A0131, Revision 1, dated May 8, 2013.

**(h) For Group 2 and 3 Airplanes: Repetitive Inspections of the Support Ribs, Related Investigative and Corrective Actions, and Fastener Replacement**

For Group 2 and 3 airplanes, as specified in Boeing Service Bulletin 767–57A0131, Revision 1, dated May 8, 2013: Except as required by paragraph (j) of this AD, at the time specified in table 2 of paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 767–57A0131, Revision 1, dated May 8, 2013, do a detailed inspection of the cap seal for damaged sealant on the nuts common to outboard flap support rib numbers 1, 2, 7, and 8, and do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767–57A0131, Revision 1, dated May 8, 2013. Do all applicable related investigative and corrective actions before further flight.

(1) If, during any detailed inspection of the cap seal required by paragraph (h) of this AD, no damaged sealant is found on any support rib, do the actions specified in paragraphs (h)(1)(i) and (h)(1)(ii) of this AD.

(i) Repeat the detailed inspection of the cap seal on that support rib thereafter at the intervals specified in table 2 of paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 767–57A0131, Revision 1, dated May 8, 2013, until the actions required by paragraph (h)(1)(ii) of this AD are done or until all fasteners are replaced within that support rib as specified in paragraph (i) of this AD.

(ii) Except as required by paragraph (j) of this AD, at the time specified in table 2 of paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 767–57A0131, Revision 1, dated May 8, 2013: Do a detailed inspection to determine the nut type installed in the outboard flap support rib and do all applicable corrective actions, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767–57A0131, Revision 1, dated May 8, 2013. Do all applicable corrective actions before further flight.

(2) If, during any related investigative action required by paragraph (h) of this AD, no cracking and no corrosion is found on the nut, bolt, and washers of any support rib, do the actions specified in paragraphs (h)(2)(i) and (h)(2)(ii) of this AD.

(i) Repeat the detailed inspection of the cap seal on that support rib thereafter at the intervals specified in table 2 of paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 767–57A0131, Revision 1, dated May 8, 2013, until the actions required by paragraph (h)(2)(ii) of this AD are done or until all fasteners are replaced within that support rib as specified in paragraph (i) of this AD.

(ii) Except as required by paragraph (j) of this AD, at the time specified in table 2 of paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 767–57A0131, Revision 1, dated May 8, 2013: Do a detailed inspection to determine the nut type installed in the outboard flap support rib and do all applicable corrective actions, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767–57A0131, Revision 1, dated May 8, 2013. Do all applicable corrective actions before further flight.

**(i) Terminating Action for Repetitive Inspections**

(1) If cracking is found during any inspection required by paragraph (g) or (h) of this AD: Replacing all the fasteners within the outboard flap support rib number 1, 2, 7, or 8, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767–57A0131, Revision 1, dated May 8, 2013, terminates the inspections required by paragraph (g) or (h) of this AD for that support rib only.

(2) If a discrepancy other than cracking is found (e.g., corrosion) during any inspection required by paragraph (g) of this AD: Replacing all the fasteners within the outboard flap support rib number 1, 2, 7, or 8, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767–57A0131, Revision 1, dated May 8, 2013, terminates the inspections required by paragraph (g) of this AD for that support rib only.

(3) If a discrepancy other than cracking is found (e.g., corrosion) during any inspection required by paragraph (h) of this AD: Replacing the affected fastener terminates the repetitive inspections for only that fastener within that support rib.

**(j) Exception to Service Information**

Where Boeing Service Bulletin 767–57A0131, Revision 1, dated May 8, 2013, specifies a compliance time relative to the issue date of that service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD.

**(k) Credit for Previous Actions**

This paragraph provides credit for the applicable actions required by paragraphs (g), (h), and (i) of this AD, if those actions were performed before the effective date of this AD using Boeing Alert Service Bulletin 767–57A0131, dated October 30, 2012, which is not incorporated by reference in this AD.

**(l) Alternative Methods of Compliance (AMOCs)**

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (m) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

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

**(m) Related Information**

(1) For more information about this AD, contact Berhane Alazar, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6577; fax: 425–917–6590; email: *berhane.alazar@faa.gov.*

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

**(n) Material Incorporated by Reference**

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

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

(i) Boeing Service Bulletin 767–57A0131, Revision 1, dated May 8, 2013.

(ii) Reserved.

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

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

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

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

**Stephen P. Boyd,**

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

[FR Doc. 2013–22414 Filed 9–16–13; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2013–0097; Directorate Identifier 2011–NM–243–AD; Amendment 39–17572; AD 2013–17–08]**

**RIN 2120–AA64**

## Airworthiness Directives; The Boeing Company Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** We are superseding airworthiness directive (AD) 2010–20–08, which applied to certain The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, and 747SR series airplanes. AD 2010–20–08 required repetitive inspections to find cracking of the web, strap, inner chords, inner chord angle of the forward edge frame of the number 5 main entry door cutouts; the frame segment between stringers 16 and 31; repair if necessary; and repetitive inspections for cracking of repairs. This new AD expands the previous fuselage areas that are inspected for cracking. This AD was prompted by multiple reports of cracking outside of the previous inspection areas and a report of a crack that initiated at the aft edge of the inner chord rather than initiating at a fastener location. We are issuing this AD to detect and correct such cracks, which could cause damage to the adjacent body structure and could result in depressurization of the airplane in flight.

**DATES:** This AD is effective October 22, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of October 22, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of November 9, 2010 (75 FR 61337, October 5, 2010).

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of September 12, 2001 (66 FR 41440, August 8, 2001).

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

**Examining the AD Docket**

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

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

**SUPPLEMENTARY INFORMATION:**

**Discussion**

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2010–20–08, Amendment 39–16442 (75 FR 61337, October 5, 2010) (''AD 2010–20–08)''. AD 2010–20–08 applied to the specified products. The NPRM published in the **Federal Register** on March 6, 2013 (78 FR 14469). The NPRM proposed to require repetitive inspections to find cracking of the web, strap, inner chords, inner chord angle of the forward edge frame of the number 5 main entry door cutouts; the frame segment between stringers 16 and 31; repair if necessary; and repetitive inspections for cracking of repairs. The NPRM also proposed to expand the previous fuselage areas that are inspected for cracking.

**Comments**

We gave the public the opportunity to participate in developing this AD. The

following presents the comments received on the proposal (78 FR 14469, March 6, 2013) and the FAA's response to each comment.

**Support for the NPRM (78 FR 14469, March 6, 2013)**

Boeing stated that it concurs with the contents of the NPRM (78 FR 14469, March 6, 2013).

**Request To Change Repair Procedure**

UPS requested that we revise paragraph (q) of the NPRM (78 FR 14469, March 6, 2013) to allow repairs in accordance with Boeing Alert Service Bulletin 747–53A2450, Revision 7, dated November 2, 2011, instead of only the alternative method of compliance process. UPS asserted that Boeing Alert Service Bulletin 747–53A2450, Revision 7, dated November 2, 2011, provides instructions to repair crack findings for the initial and post-repair inspections required by the NPRM.

We partially agree with the commenter's request. We agree that the crack repair for the initial and repetitive inspections required by paragraph (o) of this final rule is addressed by Boeing Alert Service Bulletin 747–53A2450, Revision 7, dated November 2, 2011. However, post-repair cracking is not covered by Boeing Alert Service Bulletin 747–53A2450, Revision 7, dated November 2, 2011. We have redesignated paragraph (q) of the NPRM as paragraphs (q)(1) and (q)(2) in this final rule. We have changed paragraph (q)(1) of this final rule to specify that the initial inspection crack repair for paragraph (o) of this final rule is to be done in accordance with Boeing Alert Service Bulletin 747–53A2450, Revision 7, dated November 2, 2011. We have not changed the crack repair procedure for the post-repair inspection required by paragraph (q)(2) of this final rule.

**Changes Made to This Final Rule**

We have redesignated paragraph (r) of the NPRM (78 FR 14469, March 6, 2013) as paragraph (r)(1) in this final rule, and have added paragraph (r)(2) in this final rule to clarify certain post-repair inspection procedures.

**Conclusion**

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

- Are consistent with the intent that was proposed in the NPRM (78 FR 14469, March 6, 2013) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (78 FR 14469, March 6, 2013).

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

**Costs of Compliance**

We estimate that this AD affects 151 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Inspections [actions retained from AD 2010–20–08, Amendment 39–16442 (75 FR 61337, October 5, 2010)]. | Up to 44 work-hours × $85 per hour = $3,740 per inspection cycle. | $0 | Up to $3,740 per inspection cycle. | Up to $564,740 per inspection cycle. |
| Inspections [new action] ..... | Up to 121 work-hours × $85 per hour = $10,285 per inspection cycle. | 0 | Up to $10,285 per inspection cycle. | Up to $1,553,035 per inspection cycle. |

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this AD.

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

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

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

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

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

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

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2010–20–08, Amendment 39–16442 (75

FR 61337, October 5, 2010), and adding the following new AD:

**2013–17–08 The Boeing Company:** Amendment 39–17572; Docket No. FAA–2013–0097; Directorate Identifier 2011–NM–243–AD.

**(a) Effective Date**

This AD is effective October 22, 2013.

**(b) Affected ADs**

This AD supersedes AD 2010–20–08, Amendment 39–16442 (75 FR 61337, October 5, 2010).

**(c) Applicability**

This AD applies to The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, and 747SR series airplanes, certificated in any category, having line numbers 1 through 1419 inclusive; except for Model 747–400 series airplanes that have been modified into the Model 747–400 large cargo freighter configuration.

**(d) Subject**

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 53, Fuselage.

**(e) Unsafe Condition**

This AD was prompted by multiple reports of cracking outside of the previous inspection areas and a report of a crack that initiated at the aft edge of the inner chord rather than initiating at a fastener location. We are issuing this AD to detect and correct such cracks, which could cause damage to the adjacent body structure and could result in depressurization of the airplane in flight.

**(f) Compliance**

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

**(g) Retained Repetitive Inspections for Frame Segment Between Stringers 23 and 31 (No Terminating Action)**

This paragraph restates the requirements of paragraph (g) of AD 2010–20–08, Amendment 39–16442 (75 FR 61337, October 5, 2010). For airplanes having line numbers 1 through 1304 inclusive: Inspect the airplane for cracks between stringers 23 and 31 per Boeing Alert Service Bulletin 747–53A2450, Revision 2, including Appendix A, dated January 4, 2001; or Boeing Alert Service Bulletin 747–53A2450, Revision 5, dated January 29, 2009; at the later of the applicable times specified in paragraph (h) or (i) of this AD, per table 1 to paragraphs (g) and (h) of this AD. Where there are differences between the AD and Boeing Alert Service Bulletin 747–53A2450, Revision 2, including Appendix A, dated January 4, 2001; or Boeing Alert Service Bulletin 747–53A2450, Revision 5, dated January 29, 2009; the AD prevails.

TABLE 1 TO PARAGRAPHS (G) AND (H) OF THIS AD—INSPECTION REQUIREMENTS

| Type of Inspection | Area to Inspect |
|---|---|
| (1) Detailed Visual | Strap inner chords forward and aft of the web, and exposed web adjacent to the inner chords on station 2231 frame from stringers 23 through 31 per Figure 5 or Figure 6 of the service bulletins specified in paragraph (g) or (h) of this AD, as applicable. |
| (2) Surface High Frequency Eddy Current (HFEC). | Station 2231 inner chord angles at lower main sill interface per Figure 5 or Figure 6 of the service bulletins specified in paragraph (g) or (h) of this AD, as applicable. |
| (3) Open Hole HFEC | Station 2231 frame fastener locations per Figures 4 and 7, and either Figure 5 or 6 of the service bulletins specified in paragraph (g) or (h) of this AD, as applicable. |
| (4) Surface HFEC | Around fastener locations on station 2231 inner chords from stringers 23 through 31 per Figure 5 or Figure 6 of the service bulletins specified in paragraph (g) or (h) of this AD, as applicable. |
| (5) Low Frequency Eddy Current (LFEC) | Station 2231 frame strap in areas covered by the reveal per Figure 5 or Figure 6 of the service bulletins specified in paragraph (g) or (h) of this AD, as applicable. |

**Note 1 to paragraph (g) of this AD:** There is no terminating action currently available for the inspections required by paragraph (g) of this AD.

**(h) Retained Compliance Times**

This paragraph restates the requirements of paragraph (h) of AD 2010–20–08, Amendment 39–16442 (75 FR 61337, October 5, 2010). Do the inspections specified in paragraph (g) of this AD at the applicable times specified in paragraph (h)(1) or (h)(2) of this AD. Repeat the inspections at intervals not to exceed 3,000 flight cycles until the inspections required by paragraph (m) or (o) of this AD are done. Where there are differences between the AD and Boeing Alert Service Bulletin 747–53A2450, Revision 2, including Appendix A, dated January 4, 2001; or Boeing Alert Service Bulletin 747–53A2450, Revision 5, dated January 29, 2009; the AD prevails.

(1) Do the inspections per table 1 to paragraphs (g) and (h) of this AD at the applicable time specified in the logic diagram in Figure 1 of Boeing Alert Service Bulletin 747–53A2450, Revision 2, including Appendix A, dated January 4, 2001. Where the compliance time in the logic diagram specifies a compliance time beginning ''from receipt of this service bulletin,'' this AD requires that the compliance time begin ''after September 12, 2001 (the effective date of AD 2001–16–02, Amendment 39–12370 (66 FR 41440, August 8, 2001)).''

(2) After November 9, 2010 (the effective date of AD 2010–20–08, Amendment 39–16442 (75 FR 61337, October 5, 2010)), do the inspections per table 1 to paragraphs (g) and (h) of this AD at the applicable compliance time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2450, Revision 5, dated January 29, 2009. Where the compliance time in Boeing Alert Service Bulletin 747–53A2450, Revision 2, including Appendix A, dated January 4, 2001, specifies a compliance time beginning ''after the date on Revision 2 of this service bulletin,'' this AD requires that the compliance time begin ''after September 12, 2001 (the effective date of AD 2001–16–02, Amendment 39–12370 (66 FR 41440, August 8, 2001)).''

**(i) Retained Repetitive Inspections for Frame Segment Between Stringers 23 and 31**

This paragraph restates the requirements of paragraph (i) of AD 2010–20–08, Amendment 39–16442 (75 FR 61337, October 5, 2010). Within 3,000 flight cycles after accomplishment of the inspections specified in Figure 1 of Boeing Alert Service Bulletin 747–53A2450, dated May 4, 2000; or Boeing Alert Service Bulletin 747–53A2450, Revision 1, dated July 6, 2000; repeat the inspections specified in paragraph (g) of this AD at intervals not to exceed 3,000 flight cycles until the inspections required by paragraph (m) or (o) of this AD are done. Where there are differences between the AD and Boeing Alert Service Bulletin 747–53A2450, Revision 2, dated January 4, 2001; or Boeing Alert Service Bulletin 747–53A2450, Revision 5, dated January 29, 2009; the AD prevails.

**(j) Retained Additional Repetitive Inspections (For Frame Segment Between Stringers 16 and 23)**

This paragraph restates the requirements of paragraph (j) of AD 2010–20–08, Amendment 39–16442 (75 FR 61337, October 5, 2010).

(1) For all airplanes: Before the accumulation of 16,000 total flight cycles, or within 1,500 flight cycles after November 9, 2010 (the effective date of AD 2010–20–08, Amendment 39–16442 (75 FR 61337, October 5, 2010)), whichever occurs later, do a detailed inspection, an open hole HFEC inspection, a surface HFEC inspection, and a subsurface LFEC inspection for cracking of the forward edge frame of the number 5 main entry door cutouts, at station 2231, between stringers 16 and 23; in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2450, Revision 5, dated January 29, 2009. Repeat the inspections thereafter at intervals not to exceed 3,000 flight cycles.

(2) The part number of the nut for fastener code ''K'' in Figure 7 of Boeing Alert Service Bulletin 747–53A2450, Revision 5, dated January 29, 2009, should be ''BACN10JC3CD,'' instead of ''BACB30JC3CD.'' In addition, the part number of the optional nut for this fastener code should be ''BACN10YR3CD,'' instead of ''BACN10YR4CD,'' in Boeing Alert Service Bulletin 747–53A2450, Revision 5, dated January 29, 2009.

**(k) Retained Repetitive Inspections for Line Numbers 1305 and On (For Frame Segment Between Stringers 23 and 31)**

This paragraph restates the requirements of paragraph (k) of AD 2010–20–08, Amendment 39–16442 (75 FR 61337, October 5, 2010). For airplanes having line numbers 1305 and on: Before the accumulation of 16,000 total flight cycles, or within 1,500 flight cycles after November 9, 2010 (the effective date of AD 2010–20–08, Amendment 39–16442 (75 FR 61337, October 5, 2010)), whichever occurs later, do a detailed inspection, an open hole HFEC inspection, a surface HFEC inspection, and a subsurface LFEC inspection for cracking of the forward edge frame of the number 5 main entry door cutouts, at station 2231, between stringers 23 and 31; in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2450, Revision 5, dated January 29, 2009. Repeat the inspections thereafter at intervals not to exceed 3,000 flight cycles.

**(l) Retained Corrective Action for Paragraphs (g), (j), and (k) of This AD**

This paragraph restates the requirements of paragraph (l) of AD 2010–20–08, Amendment 39–16442 (75 FR 61337, October 5, 2010). If any crack is found during any inspection required by paragraph (g), (j), or (k) of this AD, before further flight, repair the crack in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, in accordance with data meeting the type certification basis of the airplane approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings; or in accordance with Boeing Alert Service Bulletin 747–53A2450, Revision 5, dated January 29, 2009; as applicable. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the approval letter must specifically reference this AD. As of November 9, 2010 (the effective date of AD 2010–20–08), repair the crack using a method approved in accordance with the procedures specified in paragraph (s) of this AD.

**(m) Retained Post-Repair Inspections**

This paragraph restates the requirements of paragraph (m) of AD 2010–20–08, Amendment 39–16442 (75 FR 61337, October 5, 2010). Except as required by paragraph (n) of this AD, for airplanes on which the forward edge frame of the number 5 main entry door cutouts, at station 2231, between stringers 16 and 31, is repaired as specified in Boeing Alert Service Bulletin 747–53A2450: Within 3,000 flight cycles after doing the repair, or within 1,500 flight cycles after November 9, 2010 (the effective date of AD 2010–20–08), whichever occurs later, do the detailed, LFEC, and HFEC inspections of the repaired area for cracks, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2450, Revision 5, dated January 29, 2009. If no cracking is found, repeat the inspections thereafter at intervals not to exceed 3,000 flight cycles. If any crack is found: Before further flight, repair using a method approved in accordance with the procedures specified in paragraph (s) of this AD. Doing the inspections specified in paragraph (m) of this AD terminates the repetitive inspections required by paragraphs (g), (h), (i), (j), and (k) of this AD for the repaired area.

**(n) Retained Post-Repair Inspection Restriction**

This paragraph restates the requirements of paragraph (n) of AD 2010–20–08, Amendment 39–16442 (75 FR 61337, October 5, 2010). For any frame that is repaired in accordance with a method other than the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2450, Revision 5, dated January 29, 2009: Do the inspection in accordance with a method approved in accordance with the procedures specified in paragraph (s) of this AD.

**(o) New Repetitive Inspections With Expanded Inspection Area**

Before the accumulation of 16,000 total flight cycles, or within 3,000 flight cycles after the effective date of this AD, whichever occurs later, do the inspections required by paragraphs (o)(1) through (o)(5) of this AD, except as specified in paragraph (p) of this AD. Do all actions required by this paragraph in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2450, Revision 7, dated November 2, 2011. Repeat the inspections thereafter at the applicable times specified in Paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2450, Revision 7, dated November 2, 2011. Accomplishment of the initial inspections required by this paragraph terminates the requirements of paragraphs (g) through (k) of this AD.

(1) Do a detailed inspection for cracking on the frame strap, inner chords forward and aft of the web, and exposed web adjacent to the inner chords from stringer 15 to 31.

(2) Do an HFEC inspection of the station 2231 frame fastener locations for cracking from stringer 16 to 31, including locations common to the upper main sill strap and stringer clip at stringer 16.

(3) Do an HFEC inspection for cracking of the frame inner chords around the fastener heads from stringer 15 to 31.

(4) Do an HFEC inspection for cracking of the aft edge of the aft inner chord, of the forward edge of the forward inner chord, and of the forward and aft edges of the frame strap from stringer 15 to 31.

(5) Do an LFEC inspection for cracking of the station 2231 frame strap from stringer 16 to 31 in areas covered by the reveal.

**(p) New Post-Repair Inspection for Repaired Areas**

For airplanes on which the post-repair inspections are being done as specified in paragraph (m) of this AD: For the repaired area only, continue the inspections as specified in paragraph (m) of this AD in lieu of the inspections specified in paragraph (o) of this AD.

**(q) New Corrective Action**

(1) If any cracking is found during any inspection required by paragraph (o) of this AD: Before further flight, repair the cracking, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2450, Revision 7, dated November 2, 2011.

(2) If any cracking is found during any inspection required by paragraph (p) or (r) of this AD: Before further flight, repair the cracking using a method approved in accordance with the procedures specified in paragraph (s) of this AD.

**(r) New Post-Repair Repetitive Inspections and Corrective Action**

(1) For any airplane repaired as specified in paragraph (q)(1) of this AD: Within 3,000 flight cycles after doing the repair, do detailed, LFEC, and HFEC inspections of the repaired area for cracking, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2450, Revision 7, dated November 2, 2011. If no cracking is found, repeat the inspections thereafter at intervals not to exceed 3,000 flight cycles. If any cracking is found: Before further flight, repair the cracking using a method approved in accordance with the procedures specified in paragraph (s) of this AD.

(2) For any airplane repaired as specified in paragraph (q)(2) of this AD: Before further flight, contact the Manager, Seattle Aircraft Certification Office (ACO), FAA, for instructions and compliance times for doing an inspection of the repaired area for cracking. Do the inspection at the compliance times specified using the inspection procedures provided. If any cracking is found: Before further flight, repair the cracking using a method approved in accordance with the procedures specified in paragraph (s) of this AD.

**(s) Alternative Methods of Compliance (AMOCs)**

(1) The Manager, Seattle ACO, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes ODA that has been authorized by the Manager, Seattle ACO, to make those findings. For a repair

method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) AMOCs approved previously in accordance with AD 2010–20–08, Amendment 39–16442 (75 FR 61337, October 5, 2010), are approved as AMOCs for the corresponding provisions of paragraphs (g) through (m) of this AD.

(5) AMOCs approved previously in accordance with AD 2010–20–08, Amendment 39–16442 (75 FR 61337, October 5, 2010), that have post-repair inspections are approved as AMOCs for the corresponding provisions of paragraph (o) of this AD for the repaired area only.

**(t) Related Information**

For more information about this AD, contact Nathan Weigand, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6428; fax: 425–917–6590; email: *Nathan.P.Weigand@faa.gov.*

**(u) Material Incorporated by Reference**

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

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

(3) The following service information was approved for IBR on October 22, 2013.

(i) Boeing Alert Service Bulletin 747–53A2450, Revision 7, dated November 2, 2011.

(ii) Reserved.

(4) The following service information was approved for IBR on November 9, 2010 (75 FR 61337, October 5, 2010).

(i) Boeing Alert Service Bulletin 747–53A2450, Revision 5, dated January 29, 2009.

(ii) Reserved.

(5) The following service information was approved for IBR on September 12, 2001 (66 FR 441440, August 8, 2001).

(i) Boeing Alert Service Bulletin 747–53A2450, Revision 2, including Appendix A, dated January 4, 2001.

(ii) Reserved.

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

(7) You may view this service information at 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.

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

Issued in Renton, Washington, on August 16, 2013.

**Jeffrey E. Duven,**

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

[FR Doc. 2013–22408 Filed 9–16–13; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 520

**[Docket No. FDA–2013–N–0002]**

### Oral Dosage Form New Animal Drugs; Amprolium; Meloxicam

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

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval actions for new animal drug applications (NADAs) and abbreviated new animal drug applications (ANADAs) during August 2013. FDA is also informing the public of the availability of summaries of the basis of approval and of environmental review documents, where applicable.

**DATES:** This rule is effective September 17, 2013.

**FOR FURTHER INFORMATION CONTACT:** George K. Haibel, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9019, *george.haibel@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** FDA is amending the animal drug regulations to reflect approval actions for NADAs and ANADAs during August 2013, as listed in table 1. In addition, FDA is informing the public of the availability, where applicable, of documentation of environmental review required under the National Environmental Policy Act (NEPA) and, for actions requiring review of safety or effectiveness data, summaries of the basis of approval (FOI Summaries) under the Freedom of Information Act (FOIA). These public documents may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday. Persons with access to the Internet may obtain these documents at the CVM FOIA Electronic Reading Room: *http://www.fda.gov/AboutFDA/CentersOffices/OfficeofFoods/CVM/CVMFOIAElectronicReadingRoom/default.htm.*

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

TABLE 1—ORIGINAL AND SUPPLEMENTAL NADAS AND ANADAS APPROVED DURING AUGUST 2013

| NADA/ ANADA | Sponsor | New Animal Drug Product Name | Action | 21 CFR Section | FOIA Summary | NEPA Review |
|---|---|---|---|---|---|---|
| 200–514 ... | Phibro Animal Health Corp., GlenPointe Centre East, 3d floor, 300 Frank W. Burr Blvd., Suite 21, Teaneck, NJ 07666. | BOVIPROL (amprolium) 9.6% Oral Solution. | Original approval as a generic copy of NADA 13–149. | 520.100 | Yes ..... | CE [1]. |
| 200–550 ... | Ceva Sante Animale, 10 Avenue de la Ballastiére 33500 Libourne, France. | MELOXIDYL (meloxicam) Oral Suspension. | Original approval as a generic copy of NADA 141–213. | 520.1350 | Yes ..... | CE [1]. |

[1] The Agency has determined under 21 CFR 25.33(a)(1) that this action is categorically excluded (CE) from the requirement to submit an environmental assessment or an environmental impact statement because it is of a type that does not individually or cumulatively have a significant effect on the human environment.

**List of Subjects in 21 CFR Part 520**

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

## PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

**Authority:** 21 U.S.C. 360b.

■ 2. In § 520.100, revise paragraph (b)(2) to read as follows:

**§ 520.100 Amprolium.**

* * * * *

(b) * * *

(2) No. 066104 for use of product described in paragraph (a)(1) of this section as in paragraph (d) of this section.

* * * * *

**§ 520.1350 [Redesignated as § 520.1367]**

■ 3. Redesignate § 520.1350 as § 520.1367.

■ 4. Amend newly redesignated § 520.1367 by revising paragraphs (a) and (b) to read as follows:

**§ 520.1367 Meloxicam.**

(a) *Specifications*—(1) Each milliliter of suspension contains 0.5 milligrams (mg) meloxicam.

(2) Each milliliter of suspension contains 1.5 mg meloxicam.

(b) *Sponsors.* See sponsors in § 510.600(c) of this chapter for uses as in paragraph (c) of this section:

(1) No. 000010 for use of the products described in paragraph (a) of this section; and

(2) No. 013744 for use of the product described in paragraph (a)(2) of this section.

* * * * *

Dated: September 11, 2013.

**Bernadette Dunham,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 2013–22523 Filed 9–16–13; 8:45 am]

BILLING CODE 4160–01–P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

## 24 CFR Parts 5 and 202

**[Docket No. FR–5536–F–02]**

**RIN 2502–AJ00**

## Federal Housing Administration (FHA) Approval of Lending Institutions and Mortgagees: Streamlined Reporting Requirements for Small Supervised Lenders and Mortgagees

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Final rule.

**SUMMARY:** This rule streamlines the FHA financial statement reporting requirements for lenders and mortgagees who are supervised by federal banking agencies and whose consolidated assets do not meet the thresholds set by their supervising federal banking agencies for submission of audited financial statements (currently set at $500 million in consolidated assets). HUD's regulations currently require all supervised lenders and mortgagees to submit annual audited financial statements as a condition of FHA lender approval and recertification. Through this rule, in lieu of the annual audited financial statements, small supervised lenders and mortgagees would be required to submit their unaudited financial regulatory reports that align with their fiscal year ends and are required to be submitted to their supervising federal banking agencies. Small supervised lenders and mortgagees would only be required to submit audited financial statements if HUD determines that the supervised lenders or mortgagees pose heightened risk to the FHA insurance fund.

This rule does not impact FHA's annual audited financial statements submission requirement for nonsupervised and large supervised lenders and mortgagees. The rule also does not impact those supervised lenders and mortgagees with consolidated assets in an amount that requires that lenders or mortgagees submit audited financial statements to their respective supervising federal banking agencies. Additionally, this final rule, consistent with the proposed rule, makes three technical changes to current regulations regarding reporting requirements for FHA-approved supervised lenders and mortgagees.

**DATES:** *Effective Date:* October 17, 2013.

**FOR FURTHER INFORMATION CONTACT:** Richard Toma, Deputy Director, Office of Lender Activities and Program Compliance, Office of Housing, Department of Housing and Urban Development, 490 L'Enfant Plaza East SW., Room P3214, Washington, DC 20024–8000; telephone number 202–708–1515 (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.

**SUPPLEMENTARY INFORMATION:**

### I. Background

On April 18, 2013 (78 FR 23178), HUD published for public comment a proposed rule that would streamline reporting requirements and relieve burden on small supervised lenders and mortgagees.[1] HUD's regulations, at 24 CFR 202.5(g), require that all lenders and mortgagees provide annual audited financial statements within 90 days of their fiscal year ends. Small supervised lenders and mortgagees, however, are not required by their supervising federal banking agencies to submit audited financial statements, but are permitted to submit unaudited financial regulatory reports. These unaudited financial regulatory reports currently include a consolidated or fourth quarter Report of Condition and Income (Federal Financial Institutions Examination Council forms 031 and 041, also known as the ''Call Report''), a consolidated or fourth quarter Thrift Financial Report, and a consolidated or fourth quarter NCUA Call Report (NCUA Form 5300 or 5310). The HUD requirement is therefore inconsistent with that of the federal banking agencies, and has the potential to impose a potentially financially prohibitive requirement on small supervised lenders and mortgagees who wish to participate in FHA programs. While HUD takes its counterparty risk management responsibilities seriously, HUD also seeks to balance its management of risk with the execution of its mission.

Upon reconsideration, HUD has determined that the financial regulatory reports required by the federal banking agencies contain sufficient information for HUD to ensure that small supervised lenders and mortgagees are suitably capitalized to meet potential needs associated with their participation in

[1] The term ''small supervised lenders and mortgagees'' refers to those lenders and mortgagees supervised by the Board of Governors of the Federal Reserve System; the Federal Deposit Insurance Corporation (FDIC); and the National Credit Union Administration (NCUA) (collectively, the ''federal banking agencies'') whose consolidated assets do not meet the thresholds set by their supervising federal banking agencies for submission of audited financial statements (currently set at $500 million in consolidated assets).

FHA lending programs. Accordingly, HUD issued the April 18, 2013, proposed rule to bring its reporting requirements for small supervised lenders mortgagees into alignment with that of the federal banking agencies. In addition to the streamlined reporting requirements, HUD proposed to make three conforming amendments to current regulations, which are also made final by this rule. Interested readers should refer to the preamble of the April 18, 2013, proposed rule for additional information on the proposed regulatory change.

## II. This Final Rule

This final rule follows publication of the April 18, 2013, proposed rule and takes into consideration the public comments received on the proposed rule. The public comment period on the proposed rule closed on June 17, 2013. HUD received 6 public comments. Commenters included a savings bank, banker and home builder associations, and credit unions. All public comments supported the proposed rule. Section III of this preamble discusses the comments received on the proposed rule. HUD has decided to adopt the proposed rule as final with no substantive changes. HUD, however, has taken the opportunity afforded by this final rule to reorganize § 202.5(g), for clarity purposes only.

### *A. Streamlined Reporting Requirements for Small Supervised Lenders and Mortgagees*

This final rule amends § 202.5(g) and adds a new (c) to § 202.6, Supervised Lenders and Mortgagees, that exempts small supervised lenders and mortgagees from submitting a copy of an audited financial statement. Small supervised lenders and mortgagees are instead required, within 90 days of their fiscal year end, to furnish to HUD the unaudited financial regulatory report that aligns with the small supervised lender's or mortgagee's fiscal year end and that the small supervised lender or mortgagee is required to submit to their respective federal banking agency. In order to manage the risk to the FHA insurance fund, HUD retains the right to request additional financial documentation, up to and including audited financial statements, if HUD determines that a small supervised lender or mortgagee poses a heightened risk to the FHA insurance fund.

HUD may determine that a small supervised lender or mortgagee poses a heightened risk to the FHA insurance fund based upon, but not limited to, one or more of the following factors: (1) Failing to provide required financial submissions under § 202.6(c)(2) within the required 90-day period following the lender's or mortgagee's fiscal year end; (2) maintaining insufficient adjusted net worth or unrestricted liquid assets as required by § 202.5(n); (3) reporting opening cash and equity balances that do not agree with the prior year's reported cash and equity balances; (4) experiencing an operating loss of 20 percent or greater of the lender's or mortgagee's net worth for the annual reporting period as governed by § 202.5(m)(1); (5) experiencing an increase in loan volume over the prior 12-month period, determined by the Secretary to be significant; (6) undertaking significant changes to business operations, such as a merger or acquisition; and (7) other factors that the Secretary considers appropriate in indicating a heightened risk to the FHA insurance fund.

### *B. Technical Amendments*

As noted earlier in this preamble, the April 18, 2013, proposed rule contained three conforming amendments to current regulations regarding reporting requirements for FHA-approved supervised lenders and mortgagees. These nonsubstantive amendments, which are adopted without change by this final rule, will codify existing requirements and correct a regulatory citation. The amendments are as follows:

1. *Audited financial statement for large supervised lenders and mortgagees.* This rule adds subparagraph (b)(4) to § 202.6 to clarify that annual audited financial statements required to be submitted by supervised lenders and mortgagees are to be submitted in accordance with the same requirements as those applicable to nonsupervised institutions under § 202.7(b)(4). Additionally, as referenced above, it exempts small supervised lenders and mortgagees from the requirement to submit audited financial statements.

2. *Technical correction to uniform financial reporting standards.* This rule makes a conforming amendments to § 5.801(a)(5) by removing loan correspondents and adding supervised lenders and mortgagees. Section 5.801 requires conformance with the uniform financial reporting requirements if HUD requires the submission of financial information.

3. *Technical correction to § 202.3(b).* This rule replaces an incorrect citation in § 202.3(b) by removing the reference to § 202.5(n)(2) and inserting the correct citation to § 202.5(m).

## III. Discussion of Public Comments

The following section presents a summary of the public comments in response to the April 18, 2013, proposed rule, and HUD's response.

All commenters supported HUD's proposed rule permitting small supervised lenders and mortgagees to submit their financial regulatory reports required by their respective federal banking agencies in place of annual audited financial statements. Commenters also supported HUD's decision to retain the right to require audited financial statements when they determine, based on the proposed list of relevant factors, that an entity poses a heightened risk to the FHA insurance fund. A number of commenters emphasized the important role of community banks in the communities they serve that may not have access to larger lenders and mortgagees. In addition, the commenters noted that community bank residential mortgage lending activities have posed very little risk to the insurance fund, but requiring community banks to finance annual audited financial statements may result in community banks no longer offering homebuyers FHA loans.

One commenter requested that in addition to no longer requiring the submission of annual audited financial statements for small supervised lenders and mortgagees, HUD no longer require costly internal control and compliance audit requirement imposed on small supervised lenders and mortgagees.

In response to the comment, HUD clarifies that small supervised lenders and mortgagees, as a result of this rule, are no longer required to submit internal control and compliance reports. Internal control and compliance reports are a part of the annual audit report. Therefore, exempting small supervised lenders and mortgagees from submitting annual financial audits required by § 202.5(g) and § 202.6(b)(4) means they are also not subject to the internal control and compliance report requirement. If, however, the Secretary determines that a small supervised lender or mortgagee poses a heightened risk to the FHA insurance fund under § 202.6(c)(3), the Secretary can require the submission of additional information, including internal control and compliance reports.

## IV. Findings and Certifications

### *Public Reporting Burden*

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995

(44 U.S.C. 3501–3520) and assigned OMB control number 2506–0085. In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

*Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule would not have a significant economic impact on a substantial number of small entities because the rule is specifically intended to ease the regulatory burden on small entities. The current regulations require full independent audited financial statements, over and above what is required by federal banking agencies in their oversight of these small supervised lenders and mortgagees. This rule would bring HUD's reporting practices in line with that of the federal banking agencies and reduce the cost of participating in FHA programs by releasing small supervised lenders and mortgagees from the requirement to submit annual audited financial statements. Instead, the rule would require the submission of the unaudited financial regulatory report already required by the small supervised lender's or mortgagee's supervising federal banking agency. Therefore, the undersigned certifies that this rule will not have a significant impact on a substantial number of small entities.

*Executive Order 13132, Federalism*

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either (1) imposes substantial direct compliance costs on state and local governments and is not required by statute, or (2) preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule would not have federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

*Environmental Impact*

This rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction. Nor does it establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. This rule is limited to the procedures governing the submission of financial reports by small supervised lenders and mortgagees applying to participate, or recertifying for participation, in FHA's single-family programs. Accordingly, under 24 CFR 50.19(c)(1), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

*Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This rule would not impose any federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

*Catalogue of Federal Domestic Assistance*

The Catalogue of Federal Domestic Assistance Number for the principal FHA single-family mortgage insurance program is 14.117.

**List of Subjects**

*24 CFR Part 5*

Administrative practice and procedure, Aged, Claims, Crime, Government contracts, Grant programs—housing and community development, Individuals with disabilities, Intergovernmental relations, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Penalties, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

*24 CFR Part 202*

Administrative practice and procedure, Home improvement, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, HUD amends 24 CFR parts 5 and 202 to read as follows:

## PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

■ 1. The authority citation for part 5 continues to read as follows:

**Authority:** 42 USC 3535, 1437a, 1437c, 1437d, 1437f, 1437n, 3535(d), Sec. 327, Pub. L. 109–115, 119 Stat. 2936, and Sec. 607, Pub. L. 109–162, 119 Stat. 3051.

■ 2. Revise § 5.801 paragraph (a)(5) to read as follows:

### § 5.801 Uniform financial reporting standards.

(a) * * *

(5) HUD-approved Title I and Title II supervised and nonsupervised lenders and mortgagees.

* * * * *

## PART 202—APPROVAL OF LENDING INSTITUTIONS AND MORTGAGEES

■ 3. The authority citation for part 202 continues to read as follows:

**Authority:** 12 U.S.C. 1703, 1709 and 1715b; 42 U.S.C. 3535(d).

### § 202.3 [Amended]

■ 4. In § 202.3 paragraph (b), remove the citation ''§ 202.5(n)(2)'' and add in its place ''§ 202.5(m)''.

■ 5. Revise § 202.5 paragraph (g) to read as follows:

### § 202.5 General approval standards.

* * * * *

(g) *Financial statements.* The lender or mortgagee shall:

(1) Furnish to the Secretary a copy of its audited financial statements within 90 days of its fiscal year end, except as provided in § 202.6(c);

(2) Furnish such other information as the Secretary may request; and

(3) Submit to an examination of that portion of its records that relates to its Title I and/or Title II program activities.

* * * * *

■ 6. In § 202.6, add new paragraphs (b)(4) and (c) to read as follows:

### § 202.6 Supervised lenders and mortgagees.

* * * * *

(b) * * *

(4) *Audit report.* Except as provided in paragraph (c) of this section, a lender or mortgagee must:

(i) Comply with the financial reporting requirements in 24 CFR part 5, subpart H. Audit reports shall be based on audits performed by a certified public accountant, or by an independent public accountant licensed by a

regulatory authority of a State or other political subdivision of the United States on or before December 31, 1970, and shall include:

(A) Financial statements in a form acceptable to the Secretary, including a balance sheet and a statement of operations and retained earnings, a statement of cash flows, an analysis of the lender's or mortgagee's net worth adjusted to reflect only assets acceptable to the Secretary, and an analysis of escrow funds; and

(B) Such other financial information as the Secretary may require to determine the accuracy and validity of the audit report.

(ii) Submit a report on compliance tests prescribed by the Secretary.

(c) *Financial statement requirements for small supervised lenders and mortgagees.*

(1) *Definitions.* For the purposes of this section, the following definitions apply:

(i) *Federal banking agency* means the Board of Governors of the Federal Reserve System; the Federal Deposit Insurance Corporation; and the National Credit Union Administration; or any successor agency thereof.

(ii) *Small supervised lender or mortgagee* means a supervised lender or mortgagee possessing consolidated assets below the threshold for required audited financial reporting as established by the federal banking agency that is responsible for the oversight of that supervised lender or mortgagee.

(2) *Financial statement requirements.* Small supervised lenders and mortgagees shall not be subject to the requirement to submit a copy of an audited financial statement under § 202.5(g) and the audit report requirements under paragraph (b)(4) of this section. Small supervised lenders and mortgagees are required, within 90 days of their fiscal year end, to furnish to the Secretary the unaudited financial regulatory report—a consolidated or fourth quarter Report of Condition and Income (Federal Financial Institutions Examination Council forms 031 and 041, also known as the ''Call Report''), a consolidated or fourth quarter Thrift Financial Report, or a consolidated or fourth quarter NCUA Call Report (NCUA Form 5300 or 5310), or such other financial regulatory report as may be required—that aligns with the small supervised lender's or mortgagee's fiscal year end and that the small supervised lender or mortgagee is required to submit to their respective federal banking agency.

(3) *Requirement for audited financial statement and other information based on determination of heightened risk to the FHA insurance fund.* If the Secretary determines that a small supervised lender or mortgagee poses a heightened risk to the FHA insurance fund, the lender or mortgagee must provide, upon request, additional financial documentation, up to and including an audited financial statement, and other information as the Secretary determines necessary. The Secretary may determine that a small supervised lender or mortgagee poses a heightened risk to the FHA insurance fund based upon, but not limited to, one or more of the following factors:

(i) Failing to provide required financial submissions under § 202.6(c)(2) within the required 90-day period following the lender's or mortgagee's fiscal year end;

(ii) Maintaining insufficient adjusted net worth or unrestricted liquid assets as required by § 202.5(n);

(iii) Reporting opening cash and equity balances that do not agree with the prior year's reported cash and equity balances;

(iv) Experiencing an operating loss of 20 percent or greater of the lender's or mortgagee's net worth for the annual reporting period as governed by § 202.5(m)(1);

(v) Experiencing an increase in loan volume over the prior 12-month period, determined by the Secretary to be significant;

(vi) Undertaking significant changes to business operations, such as a merger or acquisition; and

(vii) Other factors that the Secretary considers appropriate in indicating a heightened risk to the FHA insurance fund.

Dated: September 9, 2013.

**Carol J. Galante,**

*Assistant Secretary for Housing—Federal Housing Commissioner.*

[FR Doc. 2013–22583 Filed 9–16–13; 8:45 am]

BILLING CODE 4210–67–P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 100

**[Docket Number USCG–2013–0180]**

**RIN 1625–AA08**

## Special Local Regulation; Red Bull Flugtag Miami, Biscayne Bay; Miami, FL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a special local regulation on the waters of Biscayne Bay, east of Bayfront Park, in Miami, Florida, during the Red Bull Flugtag. The Red Bull Flugtag is scheduled to take place on September 21, 2013. The event consists of approximately 100 participants launching 30 self-propelled flying objects from a 30 foot ramp to the water below. Approximately 100 spectator vessels are anticipated to be at the event. The special local regulation is necessary to provide for the safety of the participants, participant vessels, spectators, and the general public on the navigable waters of the United States during the event. The special local regulation will establish an event area, where non-participant persons and vessels are prohibited from entering, transiting, anchoring, or remaining within.

**DATES:** This rule will be enforced from 9:30 a.m. until 6:30 p.m. on September 21, 2013.

**ADDRESSES:** Documents mentioned in this preamble are part of docket [USCG–2013–0180]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Petty Officer John K. Jennings, Sector Miami Prevention Department, Coast Guard; telephone (305) 535–4317, email *john.k.jennings@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

### Table of Acronyms

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

### A. Regulatory History and Information

On July 3, 2013, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) entitled USCG–2013–0180 Special Local Regulation; Red Bull Flugtag Miami, Biscayne Bay; Miami, FL in the **Federal Register** (78 FR 40079). We received no comments

on the proposed rule. No public meeting was requested, and none was held. Previously, temporary special local regulations regarding this maritime event have been published in the Code of Federal Regulations at 33 CFR 100.701. No final rule has been published in regards to this event. The special local regulations are not new in their entirety, but merely reflect updates to certain details of the event.

**B. Basis and Purpose**

The legal basis for the rule is the Coast Guard's authority to establish special local regulations: 33 U.S.C. 1233. The purpose of the rule is to provide for the safety of life on navigable waters of the United States during the Red Bull Flugtag.

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

On September 21, 2013, Red Bull North America is sponsoring the Red Bull Flugtag. The event will be held on the waters of Biscayne Bay, Miami, Florida. The event consists of approximately 100 participants launching 30 self-propelled flying objects from a 30ft ramp to the water below. Approximately 100 spectator vessels are expected to attend the event.

The temporary final rule will establish a special local regulation that will encompass certain waters of Biscayne Bay, Miami, Florida. The special local regulation will be enforced from 9:30 a.m. until 6:30 p.m. on September 21, 2013. The special local regulation establishes an event area, where non-participant persons and vessels are prohibited from entering, transiting, anchoring, or remaining within.

Non-participant persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may request authorization by contacting the Captain of the Port Miami by telephone at (305) 535–4472, or a designated representative via VHF radio on channel 16. If authorization to enter, transit through, anchor in, or remain within the event area is granted by the Captain of the Port Miami or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Miami or a designated representative. The Coast Guard will provide notice of the regulated area by Local Notice to Mariners, Broadcast Notice to Mariners and on-scene designated representatives.

**D. Regulatory Analyses**

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

*1. Regulatory Planning and Review*

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. The economic impact of this rule is not significant for the following reasons: (1) The special local regulation will be enforced for a maximum of nine hours; (2) non-participant persons and vessels may enter, transit through, anchor in, or remain within the regulated area during their respective enforcement periods if authorized by the Captain of the Port Miami or a designated representative; (3) non-participant persons and vessels not able to enter, transit through, anchor in, or remain within the regulated area without authorization from the Captain of the Port Miami or a designated representative may operate in the surrounding areas during the enforcement periods; and (4) the Coast Guard will provide advance notification of the special local regulation to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

*2. Impact on Small Entities*

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rule.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to enter, transit through, anchor in, or remain within the regulated area during the respective enforcement period. For the reasons discussed in the Regulatory Planning and Review section above, this rule will not have a significant economic impact on a substantial number of small entities.

*3. Assistance for Small Entities*

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

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

*4. Collection of Information*

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

*5. Federalism*

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

*6. Protest Activities*

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

jeopardizing the safety or security of people, places or vessels.

*7. Unfunded Mandates Reform Act*

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

*8. Taking of Private Property*

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

*9. Civil Justice Reform*

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

*10. Protection of Children*

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

*11. Indian Tribal Governments*

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

*12. Energy Effects*

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

*13. Technical Standards*

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

*14. Environment*

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

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

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

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

## PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

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

■ 2. Add a temporary § 100.35T07–0180 to read as follows:

**§ 100.35T07–0180 Special Local Regulation; Red Bull Flugtag, Biscayne Bay; Miami, FL.**

(a) *Regulated Area.* The following regulated area is established as a special local regulation. All coordinates are North American Datum 1983. All waters of Biscayne Bay, Miami, FL, between Bayfront Park and the Intercontinental-Miami Hotel encompassed within the following points: starting at point 1 in position 25°46′32″ N, 80°11′06″ W; thence southeast to point 2 in position 25°46′30″ N, 80°11′04″ W; thence south to point 3 in position 25°46′26″ N, 80°11′04″ W; thence southwest to point 4 in position 25°46′25″ N, 80°11′06″ W; thence north back to origin.

(b) *Definition.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Miami in the enforcement of the regulated area.

(c) *Regulation.* (1) All non-participant persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the event area without authorization from the Captain of the Port Miami or a designated representative via VHF radio on channel 16.

(2) Non-participant persons and vessels may request authorization to enter, transit through, anchor in, or remain within the regulated area by contacting the Captain of the Port Miami by telephone at 305–535–4472, or a designated representative via VHF radio on channel 16. If authorization to transit through or anchor in the regulated area is granted by the Captain of the Port Miami or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Miami or a designated representative.

(d) *Enforcement Date.* This rule will be enforced from 9:30 a.m. until 6:30 p.m. on September 21, 2013.

Dated: August 28, 2013.

**J.B. Pruett,**

*Captain, U.S. Coast Guard, Acting Captain of the Port Miami.*

[FR Doc. 2013–22610 Filed 9–16–13; 8:45 am]

BILLING CODE 9110–04–P

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 100

**[Docket Number USCG–2013–0652]**

**RIN 1625–AA08**

## Special Local Regulations; Jacksonville Dragon Boat Festival; St. Johns River; Jacksonville, FL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a Special Local Regulation on the waters of the St. Johns River in Jacksonville, Florida during the Jacksonville Dragon Boat Festival, a series of paddle boat races. The event is scheduled to take place on Saturday, September 21, 2013. The race course will be set up on Friday, September 20, 2013. Approximately eight 48 foot paddle boats will participate in the races and approximately 20 spectator

vessels are expected to attend the event. The Special Local Regulation will establish a regulated area that consists of a race area and a buffer zone that will temporarily restrict vessel traffic in a portion of the St. Johns River. Non-participant persons and vessels will be prohibited from entering or transiting through the area unless authorized by the Captain of the Port Jacksonville or a designated representative.

**DATES:** This rule is effective from 8 a.m. until 6 p.m. on September 20–21, 2013.

**ADDRESSES:** Documents mentioned in this preamble are part of docket USCG–2013–0652. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box, and then click ''Search.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary final rule, call or email Lieutenant Commander Robert Butts, Sector Jacksonville Office of Waterways Management, Coast Guard; telephone (904) 564–7563, email *Robert.S.Butts@uscg.mil.* If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

## Table of Acronyms

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

## A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because there is not sufficient time remaining to publish an NPRM and to receive public comments prior to the event. Any delay in the effective date of this rule would be contrary to the public interest because immediate action is needed to minimize potential danger to the race participants, participant vessels, spectators, and the general public.

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

## B. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish special local regulations: 33 U.S.C. 1233. The purpose of the rule is to ensure safety of life on navigable waters of the United States during the Jacksonville Dragon Boat Festival.

## C. Discussion of the Final Rule

On Saturday, September 21, 2013, In the Pink Boutique, Inc. will host the Jacksonville Dragon Boat Festival, a series of boat races. The Race Area will be set up on September 20, 2013 between the hours of 8:00 a.m. and 6:00 p.m. The event will be held on the waters of the St. Johns River, Florida. Approximately 8 boats are anticipated to participate in the races. It is anticipated that at least 20 spectator vessels will be present during the event.

The rule will establish special local regulations that encompass certain waters of the St. Johns River, Jacksonville, Florida. The special local regulations will be enforced from 8 a.m. until 6:00 p.m. on September 21, 2013. The special local regulations will consist of the following areas: A race area, where all persons and vessels, except those persons and vessels participating in the races, are prohibited from entering, transiting, anchoring, or remaining and a buffer zone where all persons vessels, except those persons and vessels participating in the races wishing to transit through the buffer zone must do so at bare steerageway. Persons and vessels will be able to request authorization to enter, transit through, anchor in, or remain within the race area by contacting the Captain of the Port Jacksonville by telephone at (904) 564–7513, or a designated representative via VHF radio on channel 16. If authorization to enter, transit through, anchor in, or remain within the race area is granted by the Captain of the Port Jacksonville or a designated representative, all persons and vessels receiving such authorization are required to comply with the instructions of the Captain of the Port Jacksonville or a designated representative. The Coast Guard will provide notice of the regulated areas by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

## D. Regulatory Analyses

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

### *1. Regulatory Planning and Review*

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

The economic impact of this temporary final rule is not significant for the following reasons: (1) The special local regulations will be enforced for a total of 20 hours over two days; (2) although persons and vessels will not be able to enter, transit through, anchor in, or remain within the race area without authorization from the Captain of the Port Jacksonville or a designated representative, they will be able to transit through the surrounding area during the enforcement period; (3) persons and vessels will still be able to enter, transit through, anchor in, or remain within the race area if authorized by the Captain of the Port Jacksonville or a designated representative; and (4) the Coast Guard will provide advance notification of the special local regulation to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

### *2. Impact on Small Entities*

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

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

entities: the owners or operators of vessels intending to enter, transit through, anchor in, or remain within that portion of the St. Johns River encompassed within the special local regulations from 8 a.m. until 6:00 p.m. on September 20–21, 2013. For the reasons discussed in the Regulatory Planning and Review section above, this rule would not have a significant economic impact on a substantial number of small entities.

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

*3. Assistance for Small Entities*

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

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

*4. Collection of Information*

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

*5. Federalism*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and 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 rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*8. Taking of Private Property*

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

*9. Civil Justice Reform*

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

*10. Protection of Children*

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

*11. Indian Tribal Governments*

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

*12. Energy Effects*

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

*13. Technical Standards*

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

*14. Environment*

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a special local regulation issued in conjunction with a regatta or marine parade. This rule is categorically excluded from further review under paragraph 34(h) and 35(b) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

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

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

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

## PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

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

■ 2. Add a temporary § 100.35T07–0652 to read as follows:

### § 100.35T07–0652 Special Local Regulations; Jacksonville Dragon Boat Festival; St. Johns River; Jacksonville, FL.

(a) *Regulated Areas.* The following regulated areas are established. All coordinates are North American Datum 1983.

(1) *Race Area.* All waters of the St. Johns River located in downtown

Jacksonville, FL encompassed within an imaginary line connecting the following points: starting at Point 1 in position 30°19′26.61″ N, 81°39′46.45″ W; thence south to Point 2 in position 30°19′22.90″ N, 81°39′47.03″ W; thence east to Point 3 in position 30°19′22.27″ N, 81°39′32.14″ W; thence north to Point 4 in position 30°19′26.16″ N, 81°39′31.69″ W; thence west back to origin.

(2) *Buffer Zone.* All waters of the St. Johns River located in downtown Jacksonville, FL encompassed within an imaginary line connecting the following points: starting at Point 1 in position 30°19′26.14″ N, 81°39′49.48″ W; thence south to Point 2 in position 30°19′21.23″ N, 81°39′47.63″ W; thence east to Point 3 in position 30°19′19.91″ N, 81°39′28.36″ W; thence north to Point 4 in position 30°19′25.96″ N, 81°39′27.97″ W; thence west along the shoreline back to origin.

(b) *Definition.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Jacksonville in the enforcement of the regulated areas.

(c) *Regulations.* (1) All persons and vessels are prohibited from:

(i) Entering, transiting through, anchoring in, or remaining within Race Area unless an authorized race participant.

(ii) Anchoring in, or remaining within the buffer zone, unless enforcing the buffer zone or a race participant transiting to the race area. Vessels wishing to transit through the buffer zone must do so at bare steerageway.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated areas may contact the Captain of the Port Jacksonville by telephone at (904) 564–7513, or a designated representative via VHF radio on channel 16, to request authorization. If authorization is granted by the Captain of the Port Jacksonville or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Jacksonville or a designated representative.

(3) The Coast Guard will provide notice of the regulated areas by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Enforcement Period.* This rule will be enforced daily from 8 a.m. until 6:00 p.m. on September 20, 2013 through September 21, 2013.

Dated: August 28, 2013.

**T.G. Allan, Jr.,**

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

[FR Doc. 2013–22596 Filed 9–16–13; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF EDUCATION

### 34 CFR Parts 75 and 371

**[Catalog of Federal Domestic Assistance (CFDA) Number: 84.250C and 84.250D]**

## Final Waivers and Extensions of Project Periods; American Indian Vocational Rehabilitation Services (AIVRS) Program

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

**ACTION:** Final waivers and extensions of project periods.

**SUMMARY:** The Secretary waives the regulations that generally limit project periods to 60 months and that restrict project period extensions involving the obligation of additional Federal funds. As a result, for the 60-month projects initially funded in fiscal years (FYs) 2007 and 2008 under the AIVRS program, the Secretary is extending the project periods until September 30, 2014.

**DATES:** Effective September 17, 2013.

**FOR FURTHER INFORMATION CONTACT:** August Martin, U.S. Department of Education, 400 Maryland Avenue SW., Room 5049, Potomac Center Plaza (PCP), Washington, DC 20202–2800. Telephone: (202) 245–7410.

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

**SUPPLEMENTARY INFORMATION:** On June 11, 2013, the Department published a notice in the **Federal Register** (78 FR 34962) inviting comments on the Department's proposal to make certain AIVRS grants effective for more than 60 months under the authority of Section 121(b)(3) of the Rehabilitation Act of 1973, as amended (the Act). The Secretary proposed to waive the requirements of 34 CFR 75.250, which generally limit project periods to 60 months, and of 34 CFR 75.261(c)(2), which restrict project period extensions involving the obligation of additional Federal funds. The Secretary also proposed to extend the project period for the 32 AIVRS grantees from October 1, 2013, through September 30, 2014. The proposed waivers and extensions would enable the 32 AIVRS grantees to request, and continue to receive, Federal funds beyond the 60-month limitation set by 34 CFR 75.250.

There are no substantive differences between the proposed and final waivers and extensions.

### Public Comment

In the June 11, 2013, notice for the AIVRS program, the Secretary invited comments on the effect these proposed waivers and extensions may have on the AIVRS program and on potential applicants for grant awards responding to any new AIVRS notice inviting applications (NIA), should there be one. We received comments from three commenters, all of whom supported the Department's proposal. In addition, one of the three commenters raised four concerns.

Generally, we do not address technical and other minor changes. In addition, we do not address general comments that raise concerns not directly related to the proposed waivers and extensions.

### Analysis of Comments and Changes

*Comment*: One commenter raised a concern about how a recent GAO report would affect the ability of current AIVRS grantees that do not have Federal or State reservations to continue serving tribal members with disabilities. The commenter also was concerned about the ''effect on the capacity and available resources for those tribes who will be determined 'ineligible' to receive RSA 121 funds to prepare its tribal members with disabilities for gainful employment.'' (The reference to ''121 funds'' refers to the section of the Act that authorizes the governing bodies and consortia of governing bodies of Indian Tribes to receive Federal assistance in order to provide vocational rehabilitation services to American Indians with disabilities.)

*Discussion*: This comment addresses an issue that is outside the scope of this notice. The Department published a notice of tribal consultation and request for comment in the **Federal Register** (78 FR 40458) on July 5, 2013. That notice specifically invited comments on the effect of a possible change in how the Department interprets the definition of the term ''reservation'' that is used to determine eligibility for a grant under the AIVRS program. The comment period for this notice closed on September 3, 2013. This comment will be considered as a response to the Department's request for comment under the Notice of Tribal Consultation.

*Changes*: None.

*Comment*: The same commenter raised a concern about whether there would be adequate funds available to grant awards to continuing AIVRS programs and other eligible tribal entities should RSA hold a section 121 grant competition in FY 2014.

*Discussion*: The AIVRS program is funded through a set-aside of the funds appropriated for the Vocational Rehabilitation (VR) State Grants program. Pending Congress's approval of a new budget, the Department anticipates that sufficient funds should be available to hold a grant competition in FY 2014 that would fund a minimum of 48 grants with project periods that would begin in FY 2015. This is the same estimated total number of new grants the Department would have awarded if it had conducted separate competitions in FY 2012, 2013, and 2014.

*Changes*: None.

*Comment*: The same commenter also expressed the need to provide technical assistance and training to existing AIVRS programs and interested eligible tribes in the development of AIVRS grant proposals and grant management. This commenter was particularly concerned, given the fact that RSA's current capacity-building projects that provides technical assistance to AIVRS projects and applicants ends on September 30, 2013.

*Discussion*: On November 8, 2012 (77 FR 66959), RSA published a request for information related to its Rehabilitation Long-Term Training program, Technical Assistance and Continuing Education, the National Clearinghouse, and Capacity Building efforts. RSA is continuing to analyze the comments we received from that notice. Funding priorities to address the need for technical assistance, including the technical assistance needs of AIVRS projects, will be published at a later time.

*Changes*: None.

**Waivers and Extensions**

The project periods for the current 32 AIVRS grantees, selected through the grant competitions held in FY 2007 and 2008 are scheduled to end September 30, 2013. However, section 121(b)(3) of the Act provides that the Department has the authority to make an AIVRS grant effective for more than 60 months, pursuant to prescribed regulations. Therefore, for these 32 AIVRS grantees, the Secretary waives the requirements of 34 CFR 75.250 and 34 CFR 75.261(c)(2), which limit project periods to 60 months and restrict project period extensions that involve the obligation of additional Federal funds. The Secretary also extends the current project period for the 32 AIVRS grantees funded in FY 2007 and 2008 through September 30, 2014. Finally, the Department will not announce a new AIVRS competition in FY 2013 or make new awards in FY 2013.

This action allows the 32 AIVRS grantees to request continuation funding in FY 2013. Decisions regarding annual continuation awards will be based on the program narratives, budgets, budget narratives, and program performance reports submitted by these 32 AIVRS grantees and on the requirements of 34 CFR 75.253. Any activities to be carried out during the year of continuation awards must be consistent with, or be a logical extension of, the scope, goals, and objectives of each grantee's application as approved following the FY 2007 and 2008 AIVRS competitions. The FY 2007 and 2008 AIVRS NIAs will continue to govern the grantees' projects during the extension year. These current AIVRS grantees may request continuation awards in FY 2013 for project periods ending September 30, 2014.

**Waiver of Delayed Effective Date**

The Administrative Procedure Act (APA) requires that a substantive rule must be published at least 30 days before its effective date, except as otherwise provided for good cause (5 U.S.C. 553(d)(3)). The Secretary has determined that a delayed effective date is unnecessary and contrary to the public interest. It is unnecessary because we received only three public comments on this action, all of which supported our proposal and we have not made any substantive changes to the proposal. It is contrary to public interest because we would not be able to make timely continuation grants to the 32 affected entities with the delay. Therefore, the Secretary waives the APA's delayed effective date provision for good cause.

**Regulatory Flexibility Act Certification**

The Secretary certifies that this final extension of the project period and waiver will not have a significant economic impact on a substantial number of small entities. The only entities that will be affected are the current grantees and any other potential applicants.

**Paperwork Reduction Act of 1995**

The final waivers and extensions of project periods do not contain any information collection requirements.

**Intergovernmental Review**

This program is not subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79.

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

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

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

Dated: September 12, 2013.

**Sue Swenson,**

*Deputy Assistant Secretary for Special Education and Rehabilitative Services, delegated the authority to perform the functions and duties of the Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 2013–22626 Filed 9–16–13; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF DEFENSE

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 17

**RIN 2900–AN92**

### Vet Center Services

**AGENCY:** Department of Defense and Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** The Department of Veterans Affairs (VA) is establishing in regulation the readjustment counseling currently provided in VA's Vet Centers to certain veterans of the Armed Forces and members of their families, and implementing provisions of the Caregivers and Veterans Omnibus

Health Services Act of 2010 regarding readjustment counseling.

**DATES:** *Effective Date:* This final rule is effective October 17, 2013.

**FOR FURTHER INFORMATION CONTACT:** Gregory Harms, Readjustment Counseling Service (10P8), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–6525. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** This final rule articulates in regulation our authority to establish Vet Centers to furnish counseling to certain veterans upon request, as set forth in 38 U.S.C. 1712A. It also meets a rulemaking requirement prescribed by Congress in section 401 of the Caregivers and Veterans Omnibus Health Services Act of 2010, Public Law 111–163 (the 2010 Act), and implements sections 304 and 401 of the 2010 Act, by authorizing Vet Centers to provide readjustment counseling to certain veterans described in section 304, their families, and certain members of the Armed Forces set forth in section 401. Finally, this rulemaking implements section 402 of the 2010 Act by authorizing Vet Centers to provide certain referral services. Although VA has provided readjustment counseling under 38 U.S.C. 1712A without a regulation in the past, in the interests of clarity and completeness, this final rule covers the provision of benefits to veterans under section 1712A as well as benefits provided under the 2010 Act.

In a document published in the **Federal Register** on March 13, 2012 (77 FR 14707), VA proposed to amend part 17 of 38 CFR by adding a new § 17.2000, which would contain the provisions described above. We provided a 60-day comment period, which ended on May 14, 2012. We received 15 comments from members of the general public.

Several commenters agreed with all or part of the proposed rulemaking and expressed support for the regulation. We did not make any changes based on these comments.

Another commenter supported the provision of readjustment counseling but was concerned because ''it has been argued by many veterans that they were denied these services for many reasons.'' We cannot respond to the commenter's concerns about denials of treatment because the comment did not recommend any changes to the proposed rule, nor did it include any specific circumstances under which a veteran was denied readjustment counseling. Moreover, addressing any such circumstance is beyond the scope of this rulemaking. Also, we are not aware of an ongoing problem of Vet Centers denying readjustment counseling to eligible veterans. In the proposed rulemaking, we stated that VA has implemented the statutory authority under 38 U.S.C. 1712A to ''establish Vet Centers that must furnish counseling to certain veterans upon request'' without regulations. We would expect to eliminate or significantly reduce the problem described by the commenter, if any such problem exists, through this rulemaking.

The commenter also stated that ''the majority of the population does not know a lot about'' the services provided at Vet Centers. VA is not aware of this problem, i.e., that a significant proportion of the eligible veteran population does not know about VA's Vet Center program. We provide face-to-face outreach, education, and referral to veterans and their families. However, if such a problem exists, this regulation will facilitate the implementation of the readjustment counseling program in the Vet Centers and clearly and publicly indicate the various services that are included in the definition of readjustment counseling. VA hopes that this rulemaking, in addition to other outreach programs, will alert veterans to the readjustment services provided in the Vet Centers. We did not make any changes based on this comment.

A commenter stated that VA should require screening for problems related to readjustment issues to better assist those veterans who are in need of treatment but who may believe they will ''not have trouble readjusting or are too stubborn to seek such counseling'' or whose ''problems manifest themselves when they are already thrown in the jungle of everyday life and their lives become too busy to seek such counseling.'' The commenter also indicated support for the proposed rule because it provided readjustment counseling for the whole family, which assists the transition into the community.

The commenter makes a valid point in that part of successful readjustment counseling is knowing when a veteran is in need of assistance. VA has addressed this issue by providing outreach programs that are available to veterans and servicemembers in Vet Centers and other VA facilities. Some of the outreach programs include the Vet Center Combat Call Center (877–WAR–VETS), which is an around-the-clock confidential call center where combat veterans and their families can call to talk about their military experience or any other issue they are facing in their readjustment to civilian life, as well as the Veterans Crisis Line, which connects veterans in crisis and their family and friends with 24-hour online chat or text messaging. There are mobile applications, such as the Post-Traumatic Stress Disorder (PTSD) Coach, that assist veterans in managing their PTSD. Outreach is also part of the veteran's primary VA care. But no matter how extensive our outreach and how convenient our services may be, VA cannot require a veteran to come to a Vet Center, nor can we intervene in the ''every day'' lives of veterans who do not seek assistance. Therefore, although we agree with the commenter's sentiments, we did not make any changes based on this comment.

Another commenter indicated strong disagreement with the 2010 Act, stating that all veterans ''deserve counseling when they return home.'' The commenter further stated that if veterans are not able to ''turn to the VA for counseling, then I believe they have no one to turn [to].'' We assure this commenter that neither the 2010 Act nor this rulemaking restrict veteran eligibility for readjustment counseling. On the contrary, this rulemaking expands the services provided by Vet Centers and makes the services available to a broader pool of qualified individuals. VA may now provide readjustment counseling to servicemembers as well as veterans who served on active duty in Operation Enduring Freedom (OEF) or Operation Iraqi Freedom (OIF), and to the families of these servicemembers and veterans. We can also provide certain referral services to those individuals who are not otherwise eligible for Vet Center services. By broadening the pool of qualified candidates who can receive readjustment counseling, VA is maintaining its commitment to improve the mental health of veterans and help these veterans, their families, and servicemembers to successfully integrate back to civilian life. We did not make any changes based on this comment.

Commenters questioned the 3-year time limit set forth in section 304 of the 2010 Act, and appeared to be confused as to whether VA would enforce that time limit. In the proposed rulemaking we stated that section 304 of the 2010 Act authorizes readjustment counseling for the immediate family of Operation Enduring Freedom and Operation Iraqi Freedom veterans for a period of 3 years after such veterans return from deployment. 77 FR 14709. However, we further explained that we have authority to provide readjustment counseling under 38 U.S.C. 1712A, 1782, and 1783, and that authority is actually broader because it does not have the 3-year

limitation found in section 304 of the 2010 Act and is not limited to OEF/OIF veterans. For this reason, we proposed in § 17.2000(a)(5) that VA would provide readjustment counseling to family members of the veteran or servicemember, without setting a time limit to the provision of such readjustment counseling. We hope that this explanation further clarifies this issue for the commenters, and we did not make any changes based on this comment.

Some commenters asked for a clear definition of ''immediate family member.'' One commenter stated that this rulemaking would restrict ''some family members from accessing appropriate counseling'' because ''[t]here is no statutory or regulatory definition of 'immediate family' for purposes of readjustment counseling.'' The commenter further stated that in most states ''same-sex parents cannot both create legal relationships with their children.'' According to the commenter, such lack of legal recognition would prevent same-sex couples and their families from obtaining readjustment counseling. The commenter suggested that VA define the term ''immediate family'' to include ''all spouses, domestic partners, children (including those for whom the veteran stood in loco parentis), and parents (including those who stood in loco parentis to the veteran), regardless of their legally recognized relationship to the veteran.'' The commenter added that this definition would apply for determinations of eligibility for all counseling services provided by Vet Centers, to include readjustment counseling and bereavement counseling under 38 U.S.C. 1782 and 1783.

We are making several changes to the final rule based on this comment. First, the commenter correctly points out that there is a need to define ''immediate family;'' however, in so doing, the commenter underscores a weakness in the proposed rule. In the proposed rulemaking, we explained that our authority to provide Vet Center services to veterans' family members originates in 38 U.S.C. 1712A, 1782, and 1783, not in section 304(a)(2) of the 2010 Act. 77 FR 14709. Section 304 of the 2010 Act reaffirmed VA's Vet Center practices in this regard, but it is not the legal foundation for them.

Section 304 of the 2010 Act used the term ''immediate family;'' however, in light of our interpretation of sections 1712A, 1782, and 1783 as providing the foundation for this rule, we now believe that the final rule should use the term ''family member'' and not ''immediate family member.'' As raised by the commenter, the word ''immediate'' does not accurately describe the broad cohort of persons to whom Vet Centers extend readjustment counseling in order to support a veteran's readjustment to civilian life and is not required based on the expansive authority for Vet Centers. First, 38 U.S.C. 1712A authorizes VA to provide counseling to assist veterans in adjusting to civilian life, which we interpreted broadly to include family and marriage counseling that would support the veteran during the adjustment period. 77 FR 14709. Second, 38 U.S.C. 1782 specifically authorizes VA to provide counseling, training, and mental health services for members of a veteran's ''immediate family,'' but also to the legal guardian of a veteran, a family caregiver, and the individual in whose household the veteran intends to live. Third, 38 U.S.C. 1783 authorizes VA to provide bereavement counseling to a broad cohort including individuals who were treated under 38 U.S.C. 1782, immediate family members, and the veteran's parents. Moreover, Congress has not established clear limitations on the authority for VA to provide Vet Center services to family members in any of these authorities. It is not clear why Congress used the phrase ''immediate family member'' in section 304(a)(2); however, section 304 is also somewhat internally inconsistent as it also requires VA to provide assistance in ''the readjustment of the family'' in subparagraph (C) of subsection (a)(2). In order to assist in the readjustment of ''the family,'' Vet Center services must in some situations be provided to individuals who might not be in the veteran's ''immediate'' family if we were to interpret that term narrowly.

Striking the word ''immediate'' from proposed § 17.2000(a)(5) does not resolve all of the commenters' concerns. There is still a need to define which members of a veteran's family can be serviced by Vet Centers, and whether such members may include same-sex partners and/or members of a same-sex couple's family. There is little statutory guidance on this matter. First, we turn to the 2010 Act itself, which, in title I (which established VA's Program of Comprehensive Assistance for Family Caregivers (Caregivers Program)), broadly defined a veteran's family to include a parent, spouse, child, step-family member, extended family member, and anyone who lives with the veteran. The purposes of these programs are also similar. The purpose of the Caregivers Program is to assist certain disabled active duty servicemembers and veterans by supporting family members who help these disabled individuals live in the community, including during the time that such individuals are transitioning to civilian life. The purpose of Vet Centers includes assisting veterans by helping their families with readjustment issues common among veterans.

Moreover, section 103 of the 2010 Act specifically amended 38 U.S.C. 1782, one of the foundational authorities for Vet Centers, to require VA to provide section 1782 counseling to family caregivers. Therefore, at least to the extent that Vet Center services are authorized by 38 U.S.C. 1782, we must provide them to the same family members of the veteran who are included as family members under the Caregivers Program.

Based on the connections between the Caregivers Program and the services provided in Vet Centers, as well as the various authorities described above that authorize Vet Centers to provide service to family members, we believe that it is appropriate to use a definition of ''family member'' for purposes of the Vet Center program that is similar to the definition set forth in the statute and regulations relating to the Caregivers Program. As noted above, a ''family member'' is defined by 38 U.S.C. 1720G(d)(3) as a member of the family of the veteran, including the veteran's parent, spouse, child, step-family member, and extended family member, or someone who lives with the veteran but is not a member of the family of the veteran. Under 38 CFR 71.25(b), we similarly established in regulation that these are the family members who may participate as Primary or Secondary Family Caregivers. Therefore, we include these same individuals as family members for purposes of Vet Center benefits in paragraph (a)(5) of § 17.2000.

Adopting this definition will resolve the commenters' concerns. Although we do not adopt the commenters' specific wording, our definition would encompass domestic partners, spouses, children, and parents. It would also include individuals whose relationship to the veteran is ''in loco parentis,'' which the commenter defines as persons who have day-to-day care duties over the veteran or over whom the veteran has day-to-day care duties, so long as these individuals live with the veteran. It would also include transgendered individuals, again, so long as they meet one of the criteria of the regulation, which includes individuals who live with the veteran. It is important to remember that, as discussed extensively in the proposed rule, the purpose of Vet Center

counseling is to assist the veteran or servicemember in readjusting to civilian life. The broad definition suggested by the commenter and adopted in this final rule serves that broad purpose.

The above analysis and justification for the use of the Caregivers Program's definition of family member clearly applies to those whose eligibility is predicated on a veteran's (or veteran's family member's) eligibility for services under 38 U.S.C. 1712A, 1782, and 1783. However, these authorities do not authorize VA to provide readjustment counseling to servicemembers. Our authority to provide readjustment counseling to servicemembers comes from section 401 of the 2010 Act. Nevertheless, in the proposed rule, we stated that we did not believe Congress intended to authorize Vet Centers to provide lesser readjustment counseling services to servicemembers than those that we provide to veterans. Moreover, section 401 specifically authorizes the provision of services under 38 U.S.C. 1712A, which, again, we believe authorizes the provision of readjustment counseling to family members when to do so would benefit the veteran. Therefore, we believe that the same definition of family members should apply whether we are providing readjustment services to veterans or servicemembers.

A commenter stated that the proposed rule did not include veterans who had non-combat injuries or illnesses. The commenter stated that non-combat veterans should ''qualify because an injury or illness that is service-connected, regardless if it occurred in a combat or non-combat situation, will still have a devastating impact to the service member and veteran along with their family members.'' The commenter recommended that eligibility for readjustment counseling should be linked to the veteran's service-connected condition, regardless of whether such condition was incurred in combat.

Under 38 U.S.C. 1712A(a)(1)(B) readjustment counseling may be provided by VA to servicemembers or veterans who served on active duty in a theater of combat operations during a period of war or to servicemembers or veterans who served on active duty in an area where hostilities occurred or in combat against a hostile force during a period of hostilities. Although VA is able to provide mental health care to non-combat servicemembers and veterans as part of the medical benefits package, section 1712A does not support providing readjustment counseling to non-combat servicemembers or veterans. VA cannot amend this statutory authority through regulation. We did not make any changes based on this comment.

The commenter was also concerned that the term ''Armed Forces'' does not include the Commissioned Corps of the Public Health Service (PHS) or the National Oceanic and Atmospheric Administration (NOAA). The commenter recommended the use of the term ''Uniformed Services'' instead of ''Armed Forces.'' Section 17.2000(a)(4) states that VA will provide readjustment counseling to any member of the Armed Forces, including a member of the National Guard or reserve, who served on active duty in the Armed Forces in Operation Enduring Freedom or Operation Iraqi Freedom. Although the term ''Armed Forces'' is not defined in the regulation, under 38 U.S.C. 101(10), the term ''Armed Forces'' means ''the United States Army, Navy, Marine Corps, Air Force, and Coast Guard, including the reserve components thereof.'' In establishing our authority to provide Vet Center services to active duty servicemembers, we believe that Congress clearly meant that we limit eligibility to members of the Armed Forces who served on active duty. Members of the Armed Forces do not include individuals in PHS or NOAA, even if those individuals served on active duty. Our interpretation is supported by the fact that Congress specifically included members of the National Guard under section 401(a) of the 2010 Act but did not extend eligibility to PHS or NOAA. We note that we are constrained from making a broader interpretation in this case because, unlike the definition of ''family member'' discussed above, the eligibility for active duty servicemembers is clearly established by section 401 of the 2010 Act and is not part of the foundational authority for Vet Centers set forth in 38 U.S.C. 1712A, 1782, and 1783. We believe that extending our authority in such a manner would contravene the statute and, therefore, we did not make the change requested by the commenter.

The commenter further indicated that the rulemaking should define the types of readjustment counseling services that the family members of the servicemember and veteran are eligible to receive. The commenter questioned whether the family members qualify for the readjustment counseling benefits as defined in proposed paragraph (d) or if the family members are only eligible to receive certain benefits.

The commenter presents a valid point. Readjustment counseling services provided to servicemembers and veterans are not the same as the readjustment counseling services provided to the family members of servicemembers and veterans. Under 38 U.S.C. 1712A, we provide Vet Center services only if to do so would assist the veteran in adjusting to civilian life. Under 38 U.S.C. 1782, we are authorized to provide certain consultations, marriage, and family counseling to family members of veterans ''as necessary in connection with'' VA's treatment of the veteran, and some of these types of counseling are provided through our Vet Centers. Under section 304 of the 2010 Act, we are authorized to provide education, support, counseling, and mental health services to family members of servicemembers and veterans of Operation Enduring Freedom and Operation Iraqi Freedom to assist in the readjustment of the servicemember or veteran, the recovery of the individual from an injury or illness, or the readjustment of the family following the return of the individual to family life. In short, all services provided through Vet Centers to family members are premised on whether the provision of the services will aid in the readjustment of the servicemember or veteran. In response to the comment, we have clarified § 17.2000(d) to specify this limitation.

We do not believe that it is necessary to further specify when the services included in the definition of readjustment counseling can be provided to family members because any of the listed services could be provided under appropriate circumstances. For example, it might be necessary to involve family members when providing individual counseling, group counseling, and marital and family counseling for military-related readjustment issues. An assessment of whether the family member needs substance abuse treatment might be appropriate as well, particularly for those veterans who themselves need to live in a ''drug free'' environment. When employment issues present a challenge to the veteran's readjustment, a family-based approach might be necessary. Readjustment of a veteran who experienced military sexual trauma may, in some cases, involve support or counseling for a family member. Even a psychosocial assessment is defined as a ''holistic'' assessment under § 17.2000(d) and therefore, in some cases, might involve a family member.

We note that Vet Center services are provided by mental health professionals (e.g., social workers, counselors, psychologists) and are not provided by a medical professional. Therefore, to the extent that family members require medical intervention, it would not be

provided at a Vet Center—just as medical intervention would not be provided for a veteran at a Vet Center. For the scope of medical benefits provided to family members under 38 U.S.C. 1782, please see 38 CFR 71.50.

The commenter also stated that the rule does not specify the circumstances under which a family member would qualify for individual counseling. The commenter queried whether the eligibility was tied to the veteran's health or if the family member was ''eligible for individual counseling as long as the veteran/service member meets one of the four eligibility criteria.'' The commenter recommended that VA clearly define eligibility for individual counseling by family members, and how such family members can request readjustment counseling.

If the veteran or servicemember meets one of the criteria listed in paragraphs (a)(1) through (a)(4) of § 17.2000, the family member qualifies for readjustment counseling. This is stated in paragraph (a)(5). The introductory sentence to paragraph (a) states that VA will provide readjustment counseling ''upon request'' of any of the individuals listed in paragraphs (a)(1) through (a)(5). Therefore, a family member of the servicemember or veteran may request readjustment counseling simply by calling the Vet Center and requesting an appointment. A formal application is not needed. We do not believe that further clarification is needed and did not make any changes based on this comment.

A commenter stated that the proposed rule intended to include Operation New Dawn (OND), however, OND was not listed under the section governing eligibility for readjustment counseling. In the Supplementary Information section of the proposed rulemaking we stated that ''after consultation with the Department of Defense, VA considers Operation New Dawn to be part of the same contingency operation that was formerly called Operation Iraqi Freedom. Therefore, VA will consider participants in Operation New Dawn to be eligible for benefits under the legal authorities pertaining to Operation Iraqi Freedom.'' As noted by the commenter, we did not list Operation New Dawn in proposed § 17.2000(a)(4). To avoid any confusion that may arise in the future, we have added Operation New Dawn to paragraph (a)(4) as a qualifying theatre of combat operations for servicemembers and veterans to be eligible to receive readjustment counseling.

We received six comments expressing concern that the Vet Centers would no longer offer bereavement counseling to the veteran's families because the definition of readjustment counseling in proposed § 17.2000(d) had not referenced bereavement counseling. We agree with these six commenters regarding the value of bereavement counseling and wish to clarify that bereavement counseling continues to be one of the services provided by the Vet Centers. We note that the Supplementary Information section of the proposed rule discussed the availability of bereavement counseling and cited the authority for it (38 U.S.C. 1783), but we inadvertently failed to list it as part of the readjustment counseling services provided under the rule. We have amended paragraph (d) accordingly, and have amended the listed statutory authority to also include section 1783. Also, in keeping with the discussions above, we have added 38 U.S.C. 1782 to the statutory authority, as well as sections 304 and 402 of the 2010 Act.

A commenter requested that VA expedite the implementation of sections 401 and 402 of the 2010 Act because it has been two years since the authorizing statute was passed. VA's section 402 authority to provide referrals is established in statute and is already being implemented by our Vet Centers. However, our authority to provide readjustment counseling to members of the Armed Forces is predicated explicitly on the promulgation of regulations under subsection (c) of section 401 of the 2010 Act. VA may not implement this final rulemaking until after it is published in the **Federal Register**. This rulemaking will be effective 30 days after its publication. We did not make any changes based on this comment.

This commenter also requested that VA provide a strong outreach effort to servicemembers and veterans in order to make them aware of the benefits of readjustment counseling. The commenter urged that outreach efforts to servicemembers should emphasize that treatment in the Vet Centers is ''confidential and un-reportable to their military line commanders or armories, or even to VA medical and mental health authorities (unless severe psychiatric emergencies were apparent to Vet Center personnel, in which case they should be referred for immediate medical and psychiatric assistance, either within [Department of Defense (D[o]D)] or VA facilities).''

A commenter was concerned with the confidentiality of Vet Center records. Specifically, proposed paragraph (b)(4) had permitted VA to independently coordinate with DoD in order to verify a servicemember's or veteran's service in a theatre of combat operations or in an area during a period of hostilities in that area. The commenter stated that ''if VA were to attempt to verify that individual through D[o]D systems, a line commander and/or D[o]D medical authorities could obtain that individualized information related to the query. Given the well-recognized mental health stigma associated with the military, we believe this planned approach by VA would be unwise and might well serve as a dampener on these individuals' interest in participating in readjustment counseling through VA.'' The commenter did not believe it was Congress' intent that DoD officials learn the identity of individuals who may seek readjustment counseling.

We agree with the commenter, which is why in paragraph (e), we state that records of the benefits furnished by the Vet Centers will be maintained with confidentiality and independent of other VA or DoD medical records. VA will not disclose the readjustment counseling records without the servicemember's or veteran's voluntary signed authorization. However, the commenter was correct in that we did not recognize the potential inadvertent disclosure of a veteran or servicemember's identity through the independent verification authorized by proposed paragraph (b)(4). Therefore, we have removed that paragraph from the final rule.

In the Supplementary Information section of the proposed rulemaking we explained that proposed paragraph (b)(4) was intended to authorize VA to support a veteran in obtaining the proof required to establish eligibility. Rather than do so through explicit independent coordination with DoD, we amended paragraph (b) to include a provision that would allow for VA assistance in obtaining proof of eligibility at the individual's request. This will allow persons who believe that their anonymity may be jeopardized by involving VA in obtaining a copy of their Report of Separation or DD Form 214 to attempt to establish their eligibility through other means.

A commenter urged VA to maintain adequate staffing in the Vet Centers and that Congress approve funding for the Vet Centers through appropriations. The commenter also urged VA to negotiate with DoD ''a cost-sharing agreement, as envisioned in Public Law 97–174, to cover the VA's costs of service members' care based on date verifying the number of service members who access such counseling under this new authority, or that Congress authorize VA additional appropriations specifically for this care

of the active force, as well as the cost of the additional staff needed to provide the new services.''

VA agrees with the commenter in that we anticipate an increase in the number of servicemembers, veterans, and family members requesting readjustment counseling. To accommodate this increase, VA anticipates hiring 62 new full time equivalent employees over the next 3 years. VA has allotted this increase in expenditure in the Vet Center's budget. Although this rulemaking is in conjunction with DoD, the allocation of funds does not fall within DoD's budget, as recommended by the commenter. VA has the sole responsibility for the funding of the Vet Centers. None of these matters relate to the text of the regulation, and we did not make any changes based on this comment.

In the proposed rule, under paragraph (b)(1), we had stated that the title of DD Form 214 was Certificate of Release or Discharge from Active Service. We are amending paragraph (b)(1) to correct the title of DD Form 214 to Certificate of Release or Discharge from Active Duty.

Although not directly related to any of the commenter's concerns, we are clarifying the language of proposed paragraph (c). The intent of proposed paragraph (c) was to provide referral services to individuals who were on active duty in theaters of combat, in areas of hostilities, or as otherwise stated in proposed paragraph (a), but whose discharge from service was under dishonorable conditions, and to their family members. Such referral services include obtaining mental health care and services outside of VA. We believe that the intent of this paragraph was not clearly stated as proposed and we have revised the introductory paragraph to now state: ''Upon request, VA will provide an individual who does not meet the eligibility requirements of paragraph (a) of this section, solely because the individual was discharged under dishonorable conditions from active military, naval, or air service, the following.'' We have also revised the wording of proposed paragraph (c)(2) for clarity.

Based on the rationale set forth in the Supplementary Information to the proposed rule and in this final rule, VA is adopting the proposed rule as a final rule with the changes mentioned above.

**Effect of Rulemaking**

Title 38 of the Code of Federal Regulations, as revised by this final rulemaking, represents VA's implementation of its legal authority on this subject. Other than future amendments to this regulation or governing statutes, no contrary guidance or procedures are authorized. All existing or subsequent VA guidance must be read to conform with this rulemaking if possible or, if not possible, such guidance is superseded by this rulemaking.

**Paperwork Reduction Act**

The Paperwork Reduction Act of 1995 (at 44 U.S.C. 3507(d)) requires that VA consider the impact of paperwork and other information collection burdens imposed on the public. Under 5 CFR 1320.8(b)(2)(vi), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number.

This final rule will impose the following new information collection requirements. Section 17.2000(b) allows a veteran to submit a copy of a DD Form 214 or other appropriate documentation as evidence that the veteran served in a theater of combat operations or in an area during a period of hostilities in that area that would serve as the basis for establishing his or her eligibility to receive readjustment counseling. For example, receipt of one of the listed medals will be accepted as evidence to establish eligibility for readjustment counseling. As required by the Paperwork Reduction Act of 1995, VA submitted the information collection requirement to OMB for its review. OMB approved this new information collection requirement associated with the final rule and assigned OMB control number 2900–0787.

**Regulatory Flexibility Act**

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule will directly affect only individuals and will not directly affect small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

**Executive Orders 12866 and 13563**

Executive Orders 12866 and 13563 direct agencies to assess the 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 effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action,'' which requires review by OMB unless OMB waives such review, as ''any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.''

The economic, interagency, budgetary, legal, and policy implications of this regulatory action has been examined, and it has been determined to be a significant regulatory action under Executive Order 12866 because it may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

**Unfunded Mandates**

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any given year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

**Catalog of Federal Domestic Assistance Numbers**

The Catalog of Federal Domestic Assistance program numbers and titles for this final rule are as follows: 64.005, Grants to States for Construction of State Home Facilities; 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.014, Veterans State Domiciliary Care; 64.015, Veterans

State Nursing Home Care; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; 64.022, Veterans Home Based Primary Care; and 64.024, VA Homeless Providers Grant and Per Diem Program.

**List of Subjects in 38 CFR Part 17**

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Government programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Veterans.

Approved: January 8, 2013.

**John R. Gingrich,**

*Chief of Staff, Department of Veterans Affairs.*

Approved: June 5, 2013.

**Jessica L. Wright,**

*Acting Under Secretary of Defense for Personnel & Readiness, Department of Defense.*

For the reasons set forth in the preamble, the Department of Veterans Affairs amends 38 CFR part 17 as follows:

## PART 17—MEDICAL

■ 1. The authority citation for part 17 continues to read as follows:

**Authority:** 38 U.S.C. 501, and as noted in specific sections.

■ 2. Add an undesignated center heading and § 17.2000 to read as follows:

### Vet Centers

#### § 17.2000 Vet Center services.

(a) *Eligibility for readjustment counseling.* Upon request, VA will provide readjustment counseling to the following individuals:

(1) A veteran who served on active duty in a theater of combat operations during a period of war.

(2) A veteran who served on active duty in an area in which hostilities occurred, or in combat against a hostile force during a period of hostilities.

(3) A veteran who served on active duty during the Vietnam era who sought or was provided counseling under 38 U.S.C. 1712A before January 1, 2004.

(4) Any member of the Armed Forces, including a member of the National Guard or reserve, who served on active duty in the Armed Forces in Operation Enduring Freedom, Operation Iraqi Freedom or Operation New Dawn.

(5) A family member of a veteran or servicemember who is eligible for readjustment counseling under paragraphs (a)(1) through (a)(4) of this section. For purposes of this section, family member includes, but is not limited to, the spouse, parent, child, step-family member, extended family member, and any individual who lives with the veteran or servicemember but is not a member of the family of the veteran or servicemember.

(b) *Proof of eligibility.* With the veteran's or servicemember's consent, VA will assist in obtaining proof of eligibility. For the purposes of this section, proof of service in a theater of combat operations or in an area during a period of hostilities in that area will be established by:

(1) A DD Form 214 (Certificate of Release or Discharge from Active Duty) containing notations of service in a designated theater of combat operations; or

(2) Receipt of one of the following medals: The Armed Forces Expeditionary Medal, Service Specific Expeditionary Medal (e.g., Navy Expeditionary Medal), Combat Era Specific Expeditionary Medal (e.g., the Global War on Terrorism Expeditionary Medal), Campaign Specific Medal (e.g., Vietnam Service Medal or Iraq Campaign Medal), or other combat theater awards established by public law or executive order; or

(3) Proof of receipt of Hostile Fire or Imminent Danger Pay (commonly referred to as ''combat pay'') or combat tax exemption after November 11, 1998.

(c) *Referral and advice.* Upon request, VA will provide an individual who does not meet the eligibility requirements of paragraph (a) of this section, solely because the individual was discharged under dishonorable conditions from active military, naval, or air service, the following:

(1) Referral services to assist such individual, to the maximum extent practicable, in obtaining mental health care and services from sources outside VA; and

(2) If pertinent, advice to such individual concerning such individual's rights to apply to:

(i) The appropriate military, naval or air service for review of such individual's discharge or release from such service; and

(ii) VA for a VA benefits eligibility determination under 38 CFR 3.12.

(d) *Readjustment counseling defined.* For the purposes of this section, readjustment counseling includes, but is not limited to: psychosocial assessment, individual counseling, group counseling, marital and family counseling for military-related readjustment issues, substance abuse assessments, medical referrals, referral for additional VA benefits, employment assessment and referral, military sexual trauma counseling and referral, bereavement counseling, and outreach. A ''psychosocial assessment'' under this paragraph means the holistic assessing of an individual's psychological, social, and functional capacities as it relates to their readjustment from combat theaters. Readjustment counseling is provided to individuals listed in paragraphs (a)(1) through (a)(4) of this section, and to family members under paragraph (a)(5) of this section, when it would aid in the readjustment of a veteran or servicemember.

(e) *Confidentiality.* Benefits under this section are furnished solely by VA Vet Centers, which maintain confidential records independent from any other VA or Department of Defense medical records and which will not disclose such records without either the veteran or servicemember's voluntary, signed authorization, or a specific exception permitting their release. For more information, see 5 U.S.C. 552a, 38 U.S.C. 5701 and 7332, 45 CFR parts 160 and 164, and VA's System of Records 64VA15, ''Readjustment Counseling Service Vet Center Program.''

(Authority: 38 U.S.C. 501, 1712A, 1782, and 1783; Pub. L. 111–163, sec. 304, 401, and 402)

(The Office of Management and Budget has approved the information collection requirement in this section under control number 2900–0787.)

[FR Doc. 2013–22607 Filed 9–16–13; 8:45 am]

BILLING CODE 8320–01–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R10–OAR–2013–0174: FRL–9900–03-Region10]**

## Approval and Promulgation of Implementation Plans; Washington: Puget Sound Clean Air Agency Regulatory Updates

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

**ACTION:** Final rule.

**SUMMARY:** The EPA is taking final action to approve revisions to Washington's State Implementation Plan (SIP) submitted by the Washington State Department of Ecology on February 4, 2005 and August 2, 2006. The submissions contain revisions to the

Puget Sound Clean Air Agency (PSCAA) regulations approved by the PSCAA Board in 2003, 2004, and 2005. These revisions relate primarily to control measures for limiting volatile organic compounds (VOC) emissions. On July 16, 2013, the EPA proposed to approve these revisions into Washington's SIP. The EPA is taking final action to approve these revisions because they satisfy the requirements of the Clean Air Act (CAA).

**DATES:** This final rule is effective on October 17, 2013.

**ADDRESSES:** The EPA has established a docket for this action under Docket Identification No. EPA–R10–OAR–2013–0174. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information 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 through *http://www.regulations.gov* or in hard copy at EPA Region 10, Office of Air, Waste, and Toxics, AWT–107, 1200 Sixth Avenue, Seattle, Washington 98101. The EPA requests that 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 4:30p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Jeff Hunt at (206) 553–0256, *hunt.jeff@epa.gov*, or 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.

## Table of Contents

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

## I. Background

On February 4, 2005 and August 2, 2006, the Director of the Washington State Department of Ecology (Ecology) submitted revisions to the Washington SIP to incorporate regulatory changes approved by the PSCAA Board in 2003, 2004, and 2005. These regulatory changes update control measures to limit VOC emissions from motor vehicle and mobile equipment coating operations. PSCAA also removed outdated regulations related to coatings and ink manufacturing to rely on the more stringent federal standards contained in 40 CFR part 63 (Subpart HHHHH—National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing). Lastly, PSCAA modified Regulation I, Section 12.03 ''Continuous Emission Monitoring System'' in response to the EPA's concerns about enforcement authority. An explanation of the Clean Air Act requirements and implementing regulations that are met by this SIP, a detailed explanation of the revision, and the EPA's reasons for approving it were provided in the notice of proposed rulemaking published on July 16, 2013, and will not be restated here. See 78 FR 42480. The public comment period for this proposed rule ended on August 15, 2013. The EPA did not receive any comments on the proposal.

The February 4, 2005 and August 2, 2006 submittals also contained revisions to PSCAA Regulation I, Article 13 ''Solid Fuel Burning Device Standards''; Regulation I, Section 3.11 ''Civil Penalties''; Regulation I, Section 3.25 ''Federal Regulation Reference Date''; and Regulation II, Section 2.07 ''Gasoline Dispensing Facilities'' that PSCAA subsequently revised after the 2006 submission. In the EPA's July 16, 2013 proposal we explained that we would take no action on those outdated provisions.

## II. Final Action

The EPA is approving and incorporating by reference into the SIP revisions to the PSCAA regulations found in Regulation I, Section 12.03 ''Continuous Emission Monitoring Systems'' adopted September 23, 2004; Regulation II, Section 1.05 ''Special Definitions'' adopted July 24, 2003; and Regulation II, Section 3.04 ''Motor Vehicle and Mobile Equipment Coating Operations'' adopted July 24, 2003, because they are consistent with CAA requirements. The EPA is removing from the Washington SIP Regulation II, Section 3.11 ''Coatings and Ink Manufacturing'' because these emission sources are covered by more stringent federal standards.

## III. Statutory and Executive Order Reviews

Under the CAA, 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 CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

provided a consultation opportunity to the Puyallup Tribe in a letter dated June 6, 2013. The EPA did not receive a request for consultation.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 18, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

**List of Subjects in 40 CFR Part 52**

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

Dated: September 3, 2013.

**Dennis J. McLerran,**

*Regional Administrator, Region 10.*

40 CFR part 52 is amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

### Subpart WW—Washington

■ 2. Section 52.2470 is amended in paragraph (c) Table 4—PUGET SOUND CLEAN AIR AGENCY REGULATIONS:

■ a. By revising entry 12.03 under the heading ''Regulation I—Article 12: Standards of Performance for Continuous Emission Monitoring Systems.''

■ b. By revising entry 1.05 under the heading ''Regulation II—Article 1: Purpose, Policy, Short Title, and Definitions.''

■ c. By revising entry 3.04 under the heading ''Regulation II—Article 3: Miscellaneous Volatile Organic Compound Emission Standards.''

■ d. By removing entry 3.11 ''Coatings and Ink Manufacturing'' under the heading

''Regulation II—Article 3: Miscellaneous Volatile Organic Compound Emission Standards.''

**§ 52. 2470 Identification of plan.**

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(c) * * *

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TABLE 4—PUGET SOUND CLEAN AIR AGENCY REGULATIONS

| State citation | Title/Subject | State adopted date | EPA Approval date | Explanations |
|---|---|---|---|---|
| * | * | * | * | * |
| **Regulation I—Article 12: Standards of Performance for Continuous Emission Monitoring Systems** | | | | |
| * | * | * | * | * |
| 12.03 | Continuous Emission Monitoring Systems. | 9/23/04 | 9/17/13 [Insert page number where the document begins]. | |
| * | * | * | * | * |
| **Regulation II—Article 1: Purpose, Policy, Short Title, and Definitions** | | | | |
| * | * | * | * | * |
| 1.05 | Special Definitions | 7/24/03 | 9/17/13 [Insert page number where the document begins]. | |
| * | * | * | * | * |
| **Regulation II—Article 3: Miscellaneous Volatile Organic Compound Emission Standards** | | | | |
| * | * | * | * | * |
| 3.04 | Motor Vehicle and Mobile Equipment Coating Operations. | 7/24/03 | 9/17/13 [Insert page number where the document begins]. | |
| * | * | * | * | * |

* * * * *

[FR Doc. 2013–22478 Filed 9–16–13; 8:45 am]

BILLING CODE 6560–50–P

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**[Docket No. FWS–R4–ES–2012–0031; 4500030113]**

**RIN 1018–AX73**

# Endangered and Threatened Wildlife and Plants; Endangered Status for the Neosho Mucket and Threatened Status for the Rabbitsfoot

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), determine the Neosho mucket, a freshwater mussel, as endangered, and the rabbitsfoot, a freshwater mussel, as threatened, under the Endangered Species Act. The Neosho mucket occurs in Arkansas, Kansas, Missouri, and Oklahoma. The rabbitsfoot occurs in Alabama, Arkansas, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Ohio, Oklahoma, Pennsylvania, Tennessee, and West Virginia. This final rule implements the protections provided by the Act for these species. We will issue a final determination on the designation of critical habitat for these species in the near future.

**DATES:** This rule becomes effective October 17, 2013.

**ADDRESSES:** This final rule is available on the Internet at *http://www.regulations.gov* and at the Arkansas Ecological Services Office. Comments and materials received, as well as supporting documentation used in the preparation of this rule, are available for public inspection at *http://www.regulations.gov.* All of the comments, materials, and documentation that we considered in this rulemaking are available by appointment, during normal business hours at: U.S. Fish and Wildlife Service, Arkansas Ecological Service Office, 110 South Amity Road, Suite 300, Conway, AR 72032, telephone 501–513–4470 or facsimile 501–513–4480.

**FOR FURTHER INFORMATION CONTACT:** James F. Boggs, Field Supervisor, Arkansas Ecological Services Office, 110 South Amity Road, Suite 300, Conway, AR 72032, by telephone 501–513–4470 or by facsimile 501–513–4480. Persons who use a telecommunications device for the deaf (TDD), may call the Federal Information Relay Service (FIRS) at 800–877–8339.

**SUPPLEMENTARY INFORMATION:**

## Executive Summary

*Why we need to publish a rule.* Under the Endangered Species Act (Act), a species may warrant protection through listing if it is endangered or threatened throughout all or a significant portion of its range. Listing a species as an endangered or threatened species can only be completed by issuing a rule. We will issue a final determination on the designation of critical habitat for the Neosho mucket and rabbitsfoot under the Act in the near future.

*The basis for our action.* Under the Act, we can determine that a species is an endangered or threatened species based on any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We have determined that both species are threatened by destruction, modification, or curtailment of habitat or range (Factor A), inadequate existing regulatory mechanisms (Factor D), and other manmade factors (Factor E).

*Peer review and public comment.* We sought comments from three independent specialists to ensure that our designation is based on scientifically sound data, assumptions, and analyses. We invited these peer reviewers to comment on our listing proposal. The peer reviewers generally concurred with our methods and conclusions and provided additional information, clarifications, and suggestions to improve the final listing rule. We also considered all comments and information received during the comment periods.

## Previous Federal Actions

Please refer to the proposed listing rule for the Neosho mucket (*Lampsilis rafinesqueana*) and rabbitsfoot (*Quadrula cylindrica cylindrica*) (October 16, 2012; 77 FR 63440) for a detailed description of previous Federal actions concerning these species.

## Summary of Comments and Recommendations

We requested written comments from the public on the proposed listing rule for the Neosho mucket and rabbitsfoot during two comment periods. The first comment period, starting with the publication of the proposed rule (77 FR 63440), opened on October 16, 2012, and closed on December 17, 2012. The second comment period, starting with the publication of the notice of availability for the draft economic analysis and draft environmental assessment (78 FR 27171) opened on May 9, 2013, and closed on June 10, 2013. We held public information meetings in Joplin, Missouri, on May 21, 2013, and Greenville, Missouri, on May 23, 2013. We did not receive any requests for a public hearing during either comment period. We also contacted appropriate Federal, State, and local agencies, scientific organizations, and other interested parties and invited them to comment on the proposed rule. In addition, we published a total of 27 legal public notices in the States affected by the listing of both species. All substantive information provided during the comment periods has either been incorporated directly into this final determination or is addressed below.

### *Peer Reviewer Comments*

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinion from three knowledgeable individuals with scientific expertise on freshwater mussel conservation and biology, with familiarity of Neosho mucket and rabbitsfoot, the geographic region and river basins in which they occur, and conservation biology principles associated with the species. We received responses from all of the peer reviewers we contacted.

We reviewed all comments received from the peer reviewers for substantive issues and new information regarding the listing of Neosho mucket and rabbitsfoot. The peer reviewers generally concurred with our methods and conclusions and provided additional information, clarifications, and suggestions to improve the final listing rule. Peer reviewer comments on the listing of the mussels are addressed in the following summary and incorporated into this final rule as appropriate.

(1) *Comment:* One peer reviewer suggested that we discuss the lure used by rabbitsfoot to attract its fish hosts and redefine the marsupium as a ''brooding pouch'' rather than a ''pouch''.

*Our Response:* We incorporated language to address this topic under the *Background* section of this final determination.

(2) *Comment:* One peer reviewer questioned whether the Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to threatened wildlife the same as endangered wildlife.

*Our Response:* The prohibitions of section 9(a)(1) of the Act, incorporated into our regulations at 50 CFR 17.21, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt any of these), import, export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any species listed as endangered. Our regulations at 50 CFR 17.31 contain the same prohibitions for species listed as threatened, unless exceptions are made in a rule issued under section 4(d) of the Act.

(3) *Comment:* One peer reviewer suggested Neosho mucket and rabbitsfoot are thermally sensitive because closely related mussel species, such as pimpleback (*Quadrula pustulosa*), pistolgrip (*Quadrula verrucosa*), plain pocketbook (*Lampsilis cardium*), and yellow sandshell (*Lampsilis teres*), are known to be thermally sensitive, although no physiological thermal tolerance data is available for Neosho mucket and rabbitsfoot.

*Our Response:* We agree that the best available scientific information indicates that Neosho mucket and rabbitsfoot may be thermally sensitive and added language to address the topic under *Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence—Temperature* section of this final determination.

(4) *Comment:* One peer reviewer suggested there is substantial evidence the interaction of climate warming and water management is negatively affecting mussels in the south-central United States.

*Our Response:* We agree that a combination of climate patterns and local water management practices (e.g., reduced reservoir releases) led to shifts in the species richness and overall abundance of mussel assemblages dominated by thermally sensitive to thermally tolerant species in southeast Oklahoma. We incorporated language to address this topic under *Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence—Temperature* section of this final determination.

(5) *Comment:* One peer reviewer suggested poultry production is a potential threat to Neosho mucket and rabbitsfoot in the Little River basin.

*Our Response:* We agree and incorporated language to address the topic under Factor A. *The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range—Chemical Contaminants* section of this final determination.

(6) *Comment:* One peer reviewer recommended we include rabbitsfoot density information for the Little River from Galbraith and Vaughn (2011). This reviewer also recommended we include information from Galbraith (2009) on the effects of water temperature to rabbitsfoot.

*Our Response:* We agree and incorporated language to address the topic in the *Taxonomy, Life History, and Distribution* section for Rabbitsfoot and under *Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence—Temperature* section of this final determination.

(7) *Comment:* One peer reviewer recommended we include detailed anatomy of the rabbitsfoot information provided by Williams *et al.* (2008). This peer reviewer also noted several scientific citations omitted from the proposed rule that pertain to historical and modern rabbitsfoot records in the Tennessee River, lower Duck River, Ohio River, and Monongahela River.

*Our Response:* While not directly cited in the proposed rule, Butler (2005) cited several of the citations provided by the peer reviewer, and, accordingly, they are incorporated in the Service's analysis and administrative record. Our assessment of the rabbitsfoot population indicates extirpation in the Monongahela River occurred circa 1890 and is consistent with Ortmann (1919). We incorporated the other citations provided by the peer reviewer (related to soft anatomy and rabbitsfoot distribution) to address the topic in the *Summary of Biological Status and Threats* section for rabbitsfoot into this final determination.

(8) *Comment:* One peer reviewer noted the rainbow darter (*Etheostoma caeruleum*) is a host fish for rabbitsfoot.

*Our Response:* We agree and incorporated language to address the topic in the *Summary of Biological Status and Threats* section for rabbitsfoot of this final determination.

(9) *Comment:* One peer reviewer suggested it would be prudent to add the work by Vaughn and Taylor (1999) on dams and their downstream effects to freshwater mussels.

*Our Response:* We agree and incorporated language to address the topic under *Factor A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range—Impoundments* section of this final determination.

*Federal Agency Comments*

(10) *Comment:* The U.S. Army Corps of Engineers Pittsburgh District (COEPD) indicated listing of rabbitsfoot may affect the COEPD's navigation and maintenance dredging activities in the Allegheny River, its operation of Allegheny Reservoir, and its regulatory program. They indicate additional avoidance measures will be required to adequately protect rabbitsfoot and its habitat.

*Our Response:* The federally endangered clubshell (*Pleurobema clava*), northern riffleshell (*Epioblasma torulosa rangiana*), rayed bean (*Villosa fabalis*), and snuffbox (*Epioblasma triquetra*) mussels occur in the same reach of the Allegheny River as rabbitsfoot. Section 7 of the Act already requires Federal agencies to consult with the Service to ensure that any action authorized, funded, or carried out will not likely jeopardize the continued existence of these listed species. Project modifications that minimize effects to these listed mussel species also would minimize effects to rabbitsfoot. Thus, we would not expect additional conservation measures and costs for the rabbitsfoot over what are already required for these other endangered mussels.

(11) *Comment:* The COEPD asked how tributary streams will be affected by the listing of rabbitsfoot.

*Our Response:* The listing of the rabbitsfoot will occur in 15 States. We are unable to definitively determine how many tributary streams will be covered by the final designation. Section 7 of the Act requires Federal agencies to consider direct, indirect, and cumulative effects to listed species. The Service will work with COEPD to determine whether any of the current, ongoing or planned COEPD projects may have direct, indirect, or cumulative effects on tributaries within their District. As stated previously, the Service does not expect additional project modifications to minimize effects to rabbitsfoot beyond those already required for other listed mussels in the Allegheny River basin.

(12) *Comment:* The COEPD indicated stakeholders in the sand and gravel industry rely on an Adaptive Management Group Mussel Survey Protocol and conclude the protocol will need to be revised to include rabbitsfoot.

*Our Response:* This protocol is for use only in the impounded Allegheny River navigation channel (river mile 0 to near 65) and Ohio River navigation channel in Pennsylvania (river mile 0 to 40). While this area is within the range of the rabbitsfoot, it has been more than 80 years since a rabbitsfoot specimen was found in this reach of the river. Nevertheless, we agree the protocol will

need to be revised to include rabbitsfoot. However, in the past using the protocol has failed to locate the federally listed northern riffleshell and clubshell mussels while others sampling the same location using a different method have detected them. In addition, these mussels tend to be more difficult to locate than rabbitsfoot. Therefore, the protocol should be revised because of its apparent lack of effectiveness regardless of whether rabbitsfoot is listed under the Act.

*State Agency Comments*

The listing for the Neosho mucket covers Arkansas, Kansas, Missouri, and Oklahoma and for rabbitsfoot covers Alabama, Arkansas, Georgia, Kansas, Kentucky, Illinois, Indiana, Louisiana, Mississippi, Missouri, Ohio, Oklahoma, Pennsylvania, Tennessee, and West Virginia. We received comments from the States of Louisiana, Pennsylvania, Ohio, and Oklahoma regarding the proposal.

(13) *Comment:* The Pennsylvania Fish and Boat Commission (PFBC) supports the listing. PFBC concluded that golden alga (*Prymnesium parvum*) is an invasive species that has the potential to threaten the existing Shenango River rabbitsfoot population based on work by Barkoh and Fries (2010).

*Our Response:* We appreciate the support and look forward to continuing work with the PFBC to recover rabbitsfoot. We agree that golden alga is a threat to rabbitsfoot in the Shenango River and incorporated language to address the topic under *Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence—Invasive Nonindigenous Species* section of this final determination.

(14) *Comment:* The Oklahoma Department of Wildlife Conservation (ODWC) asserts the decline of rabbitsfoot geographic range is not a recent phenomenon, but rather a gradual decline over a century. It provided a breakdown of extirpation dates based on table 2 in the proposed rule, with 10 percent of those extirpations occurring prior to 1900; 26 percent from 1900 to 1930; 11 percent from 1930 to 1960; and 34 percent from 1960 to 1980, or 81 percent of the total extirpations occurring prior to 1980. ODWC concludes it is uncertain which factors contributed to earlier extirpations, but some threats may have been ameliorated in the intervening decades. It further contends the relative magnitude and importance of each threat is not adequately quantified (speculative and not supported by empirical data) for extant or extirpated rabbitsfoot populations.

*Our Response:* In determining which of the listing factors contained in Section 4 of the Act justified listing the species, we used information on the biology, ecology, distribution, abundance, status, and trends of each species from a wide variety of sources. These sources included professional journal articles, distributional status surveys, biological assessments, and other unpublished material (that is, ''gray literature'') from State natural resource agencies and natural heritage programs, Tribal governments, other Federal agencies, consulting firms, contractors, and individuals associated with professional organizations and higher educational institutions.

Although we have sporadic documentation of rabbitsfoot collections from the last century, as discussed under the *Status Assessment for Neosho Mucket and Rabbitsfoot* and *Summary of Factors Affecting the Species* sections in the proposed rule, rangewide trends indicate declining populations and, despite attempts at some locations to alleviate threats, no population is without threats significantly affecting the species. These threats are expected to be exacerbated by increased water demand, habitat degradation, and climate change in the future (Spooner and Vaughn 2008; Galbraith *et al.* 2010). We respectfully disagree that available scientific information supports the conclusion that threats have been ameliorated in many historical rivers throughout the entirety of the species range. Each threat is discussed in detail in the *Summary of Factors Affecting the Species* and is further summarized in the *Summary of Biological Status* and *Determination* sections of this final determination.

(15) *Comment:* The ODWC does not support listing rabbitsfoot as threatened. The ODWC asserts that listing is premature and may impede conservation strategies such as augmenting and reestablishing populations. It also contends that the rapid elevation of rabbitsfoot from candidate status in 2009 to a proposed threatened species in 2012 is premature and did not include sufficient coordination with the State of Oklahoma. The ODWC also concludes that 51 extant rabbitsfoot populations, albeit most of which are small and declining, are sufficient to preclude listing as a threatened species.

*Our Response:* The Act requires that we identify species of wildlife and plants that are endangered or threatened based on the best available scientific information. As defined in section 3 of the Act, a threatened species is any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. As part of our program to add species to the list of threatened and endangered wildlife, we also maintain a list of species which are candidates for listing. A candidate species is one for which we have sufficient information on biological vulnerability and threats to support a proposal to list as endangered or threatened, but for which preparation and publication of a rule is precluded by higher priority listing actions.

The rabbitsfoot was added to our candidate list in 2009 (75 FR 69222) and has remained on the candidate list through our most recent candidate notice of review (CNOR) in 2012 (77 FR 70054). Additionally, the Service presented a rangewide status assessment and overview of the proposed listing process for rabbitsfoot at the Interior Highlands Mollusk Conservation Council (IHMCC) annual meeting in 2011 and 2012. We sent out requests in 2008, 2009, and 2010 to the Unio list serve maintained by the Freshwater Mollusk Conservation Society requesting information on the status of rabbitsfoot populations and threats. We sent a letter dated March 15, 2011, to interested parties in Oklahoma including the ODWC. The Service has received numerous responses to these inquiries and our efforts to reach out to the agencies, Tribes, organizations, and academia to solicit information and input.

While the rabbitsfoot still occurs in 51 streams, it sustains recruitment and population viability consistently in only 11 large, extant river populations. This accounts only for 8 percent of the historical or 22 percent of the extant distribution of rabbitsfoot. Further, the species also sustains limited recruitment and distribution in another 17 river populations, of which 15 (88 percent) are declining. The synergistic effects of threats discussed in the proposed rule and this final determination are often complex in aquatic environments and, while making it difficult to predict changes in mussel and fish host(s) distribution, abundance, and habitat availability, it is probable that these threats are acting simultaneously on the remaining rabbitsfoot populations with negative results and are expected to continue to do so based on the best available scientific information. Based on this information and information provided in our above response, we believe there is sufficient scientific information to support our final determination of listing rabbitsfoot as a threatened species.

(16) *Comment:* ODWC requested that the Service delay listing of the rabbitsfoot until the final year (2016) of the Multi-District Litigation (MDL) settlement and listing workplan.

*Our Response:* The multiyear listing workplan was developed through a settlement agreement with plaintiff groups to resolve multidistrict litigation. It is an effort to improve implementation of the Act while adhering to our court-approved obligations under the settlement agreement. The listing workplan enables the Service to systematically review and address the needs of more than 250 species listed on the 2010 CNOR and determine if they should be added to the Federal Lists of Endangered and Threatened Wildlife and Plants. The listing workplan has established deadlines for each candidate species, including the rabbitsfoot. In making this final determination at this time, the Service is adhering to the requirements of the listing workplan and settlement agreement. Additionally, the Act requires that we make a final listing determination within 1 year of a proposal. Therefore, we cannot postpone a final determination.

(17) *Comment:* ODWC contends that implementation of recovery efforts, particularly population augmentation and reintroduction, for the rabbitsfoot will be more cumbersome due to lack of public support compared to nonlisted species.

*Our Response:* We believe that listing either mussel will not impede progress with ongoing or future population augmentation and reintroduction efforts or hinder our ability to recover the species. We agree that some property owners are reluctant to work with the Service and our partners to conduct conservation on their lands due to fear of future property use restrictions related to the Act. To address this concern, the Service has various programs that provide regulatory assurance for property owners. For example, the Safe Harbor Agreement program provides assurances to non-Federal landowners that future property use limitations will not occur without the property owner's consent, if voluntary conservation measures they implement on their property provide a net conservation benefit to the recovery of a listed species.

Further, we believe that listing the species will make additional conservation resources available. Although we are unaware of any ongoing efforts to augment or reestablish mussel populations in Oklahoma, many States (such as, Missouri, Kansas, Kentucky, Tennessee, Alabama, and Ohio) have successful propagation, augmentation, and reintroduction efforts ongoing for threatened and endangered mussels. In accordance with Service policy (65 FR 56916), the Service will work with our partners to develop a propagation, augmentation, and reintroduction plan for the Neosho mucket and rabbitsfoot to help ensure smooth transitions between various phases of conservation efforts. The Service is committed to these conservation efforts and looks forward to working closely with the State of Oklahoma and our other conservation partners to permit such efforts under section 10(a)(1)(A) of the Act. In addition, pursuant to section 6 of the Act, Oklahoma as well as the other States within the range of the rabbitsfoot would be eligible for Federal funds to implement management actions that promote the protection or recovery of the rabbitsfoot (*http://www.fws.gov/grants).*

(18) *Comment:* The Pennsylvania Department of Transportation (PDOT) opposes listing the rabbitsfoot as threatened due to the financial hardship it will bring to Pennsylvania taxpayers. PDOT concludes it is not a prudent use of transportation dollars to consult with the Service.

*Our Response:* Listing the rabbitsfoot under the Act must be based on the five listing factors (threats to the species), which do not include economic impacts. Critical habitat designation does require the Service to consider economic impacts, but that will be addressed in the rule to designate critical habitat for both mussels, which will be published at a later date.

(19) *Comment:* PDOT requested minor road work (such as rehabilitation or resurfacing) and bridge work (such as replacement and repair) on existing roads be exempt (*sic*) from formal coordination (consultation), including areas 100 feet upstream and downstream of the project footprint.

*Our Response:* All PDOT activities authorized or funded, in whole or part, by the Federal Highway Administration (FHWA) or permitted (such as, placement of bridge piers in a navigable stream) by a Federal agency such as the U.S. Army Corps of Engineers (Corps) are required to adhere to the consultation requirements of section 7(a)(2) of the Act, regardless of size. However, once the rabbitsfoot is listed, the Service can work with PDOT and FHWA or other Federal agencies to prepare a programmatic consultation that would address routine highway maintenance and other regular projects, thereby streamlining the consultation process and reducing associated costs.

(20) *Comment:* PDOT states that it issues road posting, bonding, and hauling permits to hauling industries for the purpose of protecting secondary roads from vehicle damage. PDOT acknowledges its potential liability under section 9 of the Act in the event that a hauling industry permittee has an accidental spill resulting in take of rabbitsfoot. They conclude that the Service operating under its mandate to err conservatively to protect species may be considering all road crossings as posing a threat of chemical contamination from spills. They conducted an analysis of their aforementioned program and provided information to refine our analysis of threats associated with chemical contaminants, but only identify one conflict of road bonding at State Road 2005 in Crawford County, Pennsylvania.

*Our Response:* The Service appreciates PDOT's willingness to provide an analysis of their road posting, bonding, and hauling permit program. There are instances where chemical spills have resulted in the loss of high numbers of mussels (Jones *et al.* 2001, p. 20; Brown *et al.* 2005, p. 1457; Schmerfeld 2006, pp. 12–13), and are considered a serious threat to mussel species. Therefore, chemical spills are identified as a threat to rabbitsfoot. The Service conducted an examination of land use trends, nonpoint- and point-source discharges, and determined that rabbitsfoot is subjected to the subtle, pervasive effects of chronic, low-level contamination that is ubiquitous in watersheds where it occurs. The Service has reviewed the information provided by PDOT and incorporated it into this rule where applicable. However, this information does not change our conclusion that biological and habitat effects due to chemical contaminants are a significant and ongoing threat contributing to the decline of rabbitsfoot populations.

(21) *Comment:* PDOT expressed concern with its ability to quickly issue hauling permits for oversize and overweight loads and restrict routing for materials such as fracking brine. It asserts that a need to restrict routing for a subset of haulers such as hazardous material haulers would preclude its ability to electronically permit and route these haulers, thus resulting in extensive time delays and subsequently a need for a significant increase in manpower. PDOT concludes that manual permit review to minimize section 9 liability that would result from listing rabbitsfoot represents a significant economic burden to both the State of Pennsylvania and many

industries because of needed increases in manpower to process permits.

*Our Response:* Listing the Neosho mucket and rabbitsfoot under the Act must be based on the five listing factors (threats to the species), which do not include economic impacts. Critical habitat designation does require the Service to consider economic impacts, but that will be addressed in the rule to designate critical habitat for both mussels which will be published at a later date.

Further, as discussed above (response to Comment 10), the federally endangered clubshell (*Pleurobema clava*), northern riffleshell (*Epioblasma torulosa rangiana*), rayed bean (*Villosa fabalis*), and snuffbox (*Epioblasma triquetra*) occur in the same reach of the Allegheny and Shenango Rivers and French and Muddy Creeks as rabbitsfoot. Project modifications and conservation efforts that minimize effects to these listed mussel species also would minimize effects to rabbitsfoot. Therefore, we do not believe the listing of rabbitsfoot would increase PDOT's section 9 liability on the State of Pennsylvania and industries transporting hazardous materials. However, as noted previously, the Service can work with PDOT to prepare standardized conservation measures that address the transportation of hazardous material and would minimize effects to rabbitsfoot and other federally protected mussels.

*Public Comments*

(22) *Comment:* One commenter requested that Neosho mucket and rabbitsfoot should not be removed from the Federal List of Endangered and Threatened Wildlife.

*Our Response:* We believe the commenter may have misunderstood the intent of the proposed rule. We wish to clarify that we proposed adding Neosho mucket and rabbitsfoot to the Federal List of Endangered and Threatened Wildlife and Plants, not removing them.

(23) *Comment:* One commenter suggested we should focus our efforts more on the Indiana bat rather than mussels.

*Our Response:* The Act requires that we list species that meet the definition of threatened or endangered. According to the best available science, the Neosho mucket and rabbitsfoot meet the criteria for listing and, therefore, we are required by the Act to list them. The Indiana bat (*Myotis sodalis*) was federally listed as endangered throughout its range under the Endangered Species Preservation Act of 1966 on March 11, 1967, and remains listed as endangered under the Act. Consistent with this status, the Service is focusing efforts on the bat: the Service has approved a recovery plan for the Indiana bat, and we are currently working with our partners to implement recovery actions specified in that recovery plan.

(24) *Comment:* One commenter stated the economic benefits of large impoundments and channelization projects outweigh the adverse effects to Neosho mucket and rabbitsfoot populations.

*Our Response:* Listing the Neosho mucket and rabbitsfoot under the Act must be based on the five listing factors (threats to the species), which do not include economic impacts. Critical habitat designation does require the Service to consider economic impacts, but that will be addressed in the rule to designate critical habitat for both mussels, which will be published at a later date.

(25) *Comment:* One commenter was concerned that private landowner water development projects, development of or modification of livestock and irrigation water rights, normal farming and ranching activities, and development of mineral rights on private property may trigger section 7 consultations. The commenter asked whether these activities on private property represent a federal nexus and thereby are subject to section 7 consultation.

*Our Response:* The effects of private activities, such as normal operations for rearing of livestock, farming, and modification of water rights and development of mineral rights are not subject to the Act's section 7 consultation requirements unless they are connected to a Federal action (require Federal permits, are federally funded, or are a Federal action).

## Summary of Changes From the Proposed Rule

The information below is provided as a result of the peer and public review process. In this final determination, we have made changes to the discussion of biological status and threats for both mussels from the proposed rule. We have clarified that the rabbitsfoot uses all four gills as a marsupium or ''brooding pouch'' rather than ''pouch'' for its glochidia (Fobian 2007, p. 26). Watters *et al.* (2009, p. 269) reported the rainbow darter (*E. caeruleum*) as a host fish for rabbitsfoot, but we did not cite it in the proposed rule. Also, newly included is information on the status of the rabbitsfoot in the Red River basin. In addition, new information related to the factors (threats) affecting Neosho mucket and rabbitsfoot has been added. This includes information on thermal tolerance and effects of impoundments, chemical contaminants, climate change, and invasive nonindigenous species to mussels, discussed in the Summary of Factors Affecting the Species, *Factor A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range—Chemical Contaminants* and *Impoundments* and *Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence—Temperature* and *Climate Change.*

## Background

Please refer to the proposed listing rule for the Neosho mucket and rabbitsfoot (October 16, 2013, 77 FR 63440) for a summary of species information.

## Summary of Biological Status

For more information on relative abundance and trends of extant populations of Neosho mucket and rabbitsfoot by river basin please refer to the *Taxonomy, Life History, and Distribution* section of the proposed rule published in the **Federal Register** on October 16, 2012 (77 FR 63440).

Our assessment evaluated the biological status of these species and threats affecting their continued existence. It was based upon the best available scientific and commercial data and expert opinions.

The Neosho mucket is declining rangewide, with the exception of one population. Based on historical and current data, Neosho mucket has been extirpated from approximately 1,342 rkm (834 rmi) of its historical range (62 percent). Most of this extirpation has occurred within the Oklahoma and Kansas portions of its range. The extirpation of this species from numerous streams and stream reaches within its historical range signifies that substantial population losses have occurred. Extant populations are disjunct (not contiguous) in approximately 819 rkm (509 rmi). The Spring River in Missouri supports the only viable population based on the presence of a large number of individuals and evidence of recent recruitment. Given this compilation of current distribution, abundance, and status trend information, the Neosho mucket exhibits range reductions and population declines throughout its range.

Based on historical and current data, the rabbitsfoot is declining rangewide. In 10 of the 15 States comprising the rabbitsfoot's historical range, the species is considered by State law to be

endangered (Illinois, Indiana, Kansas, Mississippi, Ohio, and Pennsylvania); threatened (Kentucky and Tennessee); of special concern (Arkansas); or it is assigned an uncategorized conservation status (Alabama). The American Malacological Union and American Fisheries Society also consider the rabbitsfoot to be threatened (*in* Butler 2005, p. 21). It is presently extant in 51 of the 141 streams of historical occurrence, a 64 percent decline. Further, in the streams where it is extant, populations with few exceptions are highly fragmented and restricted to short reaches. We add this information, which was not in the proposed rule, on the rabbitsfoot in streams within the Red River basin. The Red River basin streams primarily drain the Ouachita Mountains in southeastern Oklahoma and southwestern Arkansas and northern Louisiana; extant populations of rabbitsfoot still occur in three stream reaches within the Gulf Coastal Plain ecoregion in southern Arkansas, southeastern Oklahoma, and northern Louisiana. In addition to the density information published in the proposed rule, we add this information on rabbitsfoot density in Oklahoma, which was not in the proposed rule. Rabbitsfoot density ranged from 0.3 to 2.4 individuals per square meter at three sites in Oklahoma (Galbraith and Vaughn 2011, p. 197) in the Red River basin. In addition, the species has been extirpated from West Virginia and Georgia. The extirpation of this species from numerous streams and stream reaches within its historical range signifies that substantial population losses have occurred in each of the past several decades.

Seventeen streams (33 percent of extant populations or 12 percent of historical populations) have small populations with limited levels of recruitment and are generally highly restricted in distribution, making their viability unlikely and making them extremely susceptible to extirpation in the near future. In addition, 15 of those 17 streams (88 percent) have populations that are declining. In many of these streams, rabbitsfoot is only known from one or two documented individuals in the past decade. Its viability in these streams is doubtful, and additional extirpations may occur if this downward population trend continues. Eleven populations (22 percent of extant populations or 8 percent of historical populations; Ohio, Green, Tippecanoe, Tennessee, Paint Rock, Duck, White, Black, Strawberry, and Little Rivers and French Creek) are considered viable (Butler 2005, p. 88; Service 2010, p. 16). Given this compilation of current distribution, abundance, and status trend information, the rabbitsfoot exhibits range reductions and population declines throughout its range.

**Summary of Factors Affecting the Species**

Section 4 of the Act and its implementing regulations (50 CFR 424) set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in combination. Each of these factors is discussed below.

*Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range*

The habitats of freshwater mussels are vulnerable to water quality degradation and habitat modification from a number of activities associated with modern civilization. The decline, extirpation, and extinction of mussel species are often attributed to habitat alteration and destruction (Neves *et al.* 1997, pp. 51–52). Bogan (1993, pp. 599–600 and 603–605) linked the decline and extinction of mussels to a wide variety of threats including siltation, industrial and municipal effluents, modification of stream channels, impoundments, pesticides, heavy metals, invasive species, and the loss of host fish. Chief among the causes of decline in distribution and abundance of the Neosho mucket and rabbitsfoot, and in no particular order of ranking, are impoundment, channelization, sedimentation, chemical contaminants, mining, and oil and natural gas development (Mather 1990, pp. 18–19; Obermeyer *et al.* 1997b, pp. 113–115; Neves *et al.* 1997, pp. 63–72; Davidson 2011, pers. comm.). Neosho mucket and rabbitsfoot are both found within medium to large river drainages exposed to a variety of landscape uses. These threats to mussels in general (and Neosho mucket and rabbitsfoot where specifically known) are individually discussed below.

Impoundments

Dams eliminate and alter river flow within impounded areas, trap silt leading to increased sediment deposition, alter water quality, change hydrology and channel geomorphology, decrease habitat heterogeneity, affect normal flood patterns, and block upstream and downstream movement of mussels and fish (Layzer *et al.* 1993, pp. 68–69; Neves *et al.* 1997, pp. 63–64; Watters 2000, pp. 261–264). Within impounded waters, decline of mussels has been attributed to direct loss of supporting habitat, sedimentation, decreased dissolved oxygen, temperature levels, and alteration in resident fish populations (Neves *et al.* 1997, pp. 63–64; Pringle *et al.* 2000, pp. 810–815; Watters 2000, pp. 261–264). Downstream of dams, mussel declines are associated with changes and fluctuation in flow regime, channel scouring and bank erosion, reduced dissolved oxygen levels and water temperatures, and changes in resident fish assemblages (Williams *et al.* 1992, p. 7; Layzer *et al.* 1993, p. 69; Neves *et al.* 1997, pp. 63–64; Watters 2000, pp. 265–266; Pringle *et al.* 2000, pp. 810–815). Dams that are low to the water surface, or have water passing over them (small low head or mill dams) can have some of these same effects on mussels and their fish hosts, particularly reducing species richness and evenness and blocking fish host movements (Watters 2000, pp. 261–264; Dean *et al.* 2002, pp. 235–238).

The decline of mussels within the Arkansas, Red, White, Tennessee, Cumberland, Mississippi, and Ohio River basins has been directly attributed to construction of numerous impoundments (Miller *et al.* 1984, p. 109; Williams and Schuster 1989, pp. 7–10; Layzer *et al.* 1993, pp. 68–69; Neves *et al.* 1997, pp. 63–64; Obermeyer *et al.* 1997b, pp. 113–115; Watters 2000, pp. 262–263; Sickel *et al.* 2007, pp. 71–78; Hanlon *et al.* 2009, pp. 11–12; Vaughn and Taylor 1999, pp. 915–917; Watters and Flaute 2010, pp. 3–7). Population losses due to impoundments have likely contributed more to the decline of the Neosho mucket and rabbitsfoot than any other factor. River habitat throughout the ranges of the Neosho mucket and rabbitsfoot has been impounded, leaving short, isolated patches of suitable habitat that sometimes lacks suitable fish hosts. Neither Neosho mucket nor rabbitsfoot occur in reservoirs lacking riverine characteristics. They are unable to successfully reproduce and recruit under these conditions (Obermeyer *et al.* 1997b, p. 114; Butler 2005, p. 96). On the other hand, rabbitsfoot may persist

and even exhibit some level of recruitment in some large rivers with locks and dams where appropriate habitat quality and quantity remain (Ohio and Tennessee Rivers in riverine reaches between a few locks and dams) (Butler 2005, p. 96).

The majority of the mainstem Ohio, Cumberland, Tennessee, and White Rivers and many of their largest tributaries are impounded, in many cases resulting in tailwater (downstream of dam) conditions unsuitable for rabbitsfoot (Butler 2005, p. 96). There are 36 major dams within the Tennessee River basin (Holston, Little Tennessee, Clinch, Elk, Flint, and Sequatchie Rivers, and Bear Creek) that have resulted in the impoundment of 3,680 rkm (2,300 rmi) of the Tennessee River and its largest tributaries (Butler 2005, p. 95). Only three of these rivers support viable populations—the Tennessee, Paint Rock, and Duck Rivers. Ninety percent of the Cumberland River downstream of Cumberland Falls (rkm 866, rmi 550) as well as numerous tributaries are either directly impounded or otherwise adversely affected by cold tailwater releases from dams.

Rabbitsfoot and its fish hosts are warm-water species and the change in temperature to cold water below the dams further reduces suitable habitat for the species and may eliminate fish hosts that cannot adapt to colder water temperatures (see the Temperature section below for more information). Rabbitsfoot in the Little River, Oklahoma, were found at locations farthest from impoundments (Vaughn and Taylor 1999, p. 915). Mussel species richness and total abundance downstream of dams increases as the distance from dams increases. Little River mussel populations did not recover from impoundment effects until 20 rkm (12 rmi) downstream, with a peak of species richness and abundance at 53 rkm (33 rmi) downstream of the impoundment (Vaughn and Taylor 1999, p. 915). Other tributary impoundments that negatively impact rabbitsfoot and its fish hosts within the Ohio River basin include, but are not limited to, the Walhonding, Barren, Rough, and Eel Rivers and two rivers with viable populations, Green and Tippecanoe Rivers. The majority (7 of 11 populations or 64 percent) of viable rabbitsfoot populations (Ohio, Green, Tippecanoe, Tennessee, Duck, White, and Little Rivers) occur downstream of main stem impoundments that make these populations more susceptible to altered habitat quality and quantity associated with the impoundment or dam operation, which may be exacerbated during stochastic events such as droughts and floods.

Navigational improvements on the Ohio River began in 1830, and now include 21 lock and dam structures stretching from Pittsburgh, Pennsylvania, to Olmsted, Illinois, near its confluence with the Mississippi River. Lock and dam structures convert riverine habitat to unsuitable static habitat for the mussel and prevent movement of their fish hosts. Numerous Ohio River tributaries also have been altered by lock and dam structures. For example, a 116-rkm (72-rmi) stretch of the Allegheny River in Pennsylvania has been altered with nine locks and dams from Armstrong County to Pittsburgh. A series of six locks and dams were constructed on the lower half of the Green River decades ago that extend upstream to the western boundary of Mammoth Cave National Park, Kentucky. The declines of rabbitsfoot populations are attributable to navigational locks and dams on the Ohio, Allegheny, Monongahela, Muskingum, Kentucky, Green, Barren, and White Rivers, and are widespread throughout the species range.

Impoundments have eliminated a large portion of the Neosho mucket population and habitat in the Arkansas River basin. For example, mussel habitat in the Neosho River in Kansas has been negatively impacted by at least 15 city dams and 2 Federal dams, both with regulated flows. Almost the entire length of the river in Oklahoma is now impounded or adversely affected by tailwater releases from three major dams (Matthews *et al.* 2005, p. 308). Several reservoirs and numerous small watershed lakes have eliminated suitable mussel habitat in several larger Neosho River tributaries in Kansas and Missouri (Spring, Elk, and Cottonwood Rivers and Shoal Creek). The Verdigris River (Kansas and Oklahoma) has two large reservoirs with regulated flows, and the lower section has been channelized as part of the McClellan-Kerr Arkansas River Navigation System. All the major Verdigris River tributaries in Kansas and Oklahoma have been partially inundated by reservoirs with regulated flows and numerous flood control watershed lakes (Obermeyer *et al.* 1995, pp. 7–21). Construction of Lake Tenkiller eliminated Neosho mucket populations and habitat in the lower portion of the Illinois River, Oklahoma (Davidson 2011, pers. comm.).

Dam construction has a secondary effect of fragmenting the ranges of mussel species by leaving relict habitats and populations isolated upstream or between structures as well as creating extensive areas of deep uninhabitable, impounded waters. These isolated populations are unable to naturally recolonize suitable habitat downstream and become more prone to further extirpation from stochastic events, such as severe drought, chemical spills, or unauthorized discharges (Layzer *et al.* 1993, pp. 68–69; Cope *et al.* 1997, pp. 235–237; Neves *et al.* 1997, pp. 63–75; Watters 2000, pp. 264–265, 268; Miller and Payne 2001, pp. 14–15; Pringle *et al.* 2000, pp. 810–815; Watters and Flaute 2010, pp. 3–7). We conclude that habitat effects due to impoundment are an ongoing threat to the Neosho mucket and rabbitsfoot.

Channelization

Dredging and channelization activities have profoundly altered riverine habitats nationwide. Hartfield (1993, pp. 131–139), Neves *et al.* (1997, pp. 71–72), and Watters (2000, pp. 268–269) reviewed the specific upstream and downstream effects of channelization on freshwater mussels. Channelization affects a stream physically (accelerates erosion, increases sediment bed load, reduces water depth, decreases habitat diversity, creates geomorphic (natural channel dimensions) instability, and eliminates riparian canopy) and biologically (decreases fish and mussel diversity, changes species composition and abundance, decreases biomass, and reduces growth rates) (Hartfield 1993, pp. 131–139). Channel modification for navigation has been shown to increase flood heights (Belt 1975, p. 684), partly as a result of an increase in stream bed slope (Hubbard *et al.* 1993, p. 137). Flood events are exacerbated, conveying large quantities of sediment, potentially with adsorbed contaminants, into streams. Channel maintenance often results in increased turbidity and sedimentation that often smothers mussels (Stansbery 1970, p. 10).

Channel maintenance operations for commercial navigation have affected habitat for the rabbitsfoot in many large rivers rangewide. Periodic navigation maintenance activities (such as dredging and snag removal) may continue to negatively impact this species in the lower portions of the Ohio, Tennessee, and White Rivers, which represent 44 percent of the viable rabbitsfoot populations. In the Tennessee River, a plan to deepen the navigation channel has been proposed (Hubbs 2009, pers. comm.). Some rabbitsfoot streams were ''straightened'' to decrease distances traversed by barge traffic (for example, Verdigris River). Hundreds of miles of many midwestern (Eel, North Fork Vermilion, and Embarras Rivers) and southeastern (Paint Rock and St. Francis Rivers and Bear Creek) streams with

rabbitsfoot populations were channelized decades ago to reduce the probability and frequency of flood events. Because mussels are relatively immobile, they require a stable substrate to survive and reproduce and are particularly susceptible to channel instability (Neves *et al.* 1997, p. 23) and alteration. Channel and bank degradation have led to the loss of stable substrates in numerous rivers with commercial navigation throughout the range of rabbitsfoot. While dredging and channelization have had a greater effect on rabbitsfoot, the Neosho mucket has been affected by these activities in the Verdigris River. We conclude that habitat effects due to channelization are an ongoing threat to the Neosho mucket and rabbitsfoot.

Sedimentation

Excessive sediments are believed to negatively impact riverine mussel populations requiring clean, stable streams (Ellis 1936, pp. 39–40; Brim Box and Mossa 1999, p. 99). Adverse effects resulting from sediments have been noted for many components of aquatic communities. Potential sediment sources within a watershed include virtually all activities that disturb the land surface. Most localities occupied by the Neosho mucket and rabbitsfoot, including viable populations, are currently being affected to varying degrees by sedimentation.

Sedimentation has been implicated in the decline of mussel populations nationwide, and remains a threat to Neosho mucket and rabbitsfoot (Ellis 1936, pp. 39–40; Vannote and Minshall 1982, pp. 4105–4106; Dennis 1984, p. 212; Brim Box and Mosa 1999, p. 99; Fraley and Ahlstedt 2000, pp. 193–194; Poole and Downing 2004, pp. 119–122). Specific biological effects include reduced feeding and respiratory efficiency from clogged gills, disrupted metabolic processes, reduced growth rates, limited burrowing activity, physical smothering, and disrupted host fish attraction mechanisms (Ellis 1936, pp. 39–40; Marking and Bills 1979, p. 210; Vannote and Minshall 1982, pp. 4105–4106; Waters 1995, pp. 173–175; Hartfield and Hartfield 1996, p. 373). In addition, mussels may be indirectly affected if high turbidity levels significantly reduce the amount of light available for photosynthesis, and thus, the production of certain food items (Kanehl and Lyons 1992, p. 7).

Studies tend to indicate that the primary effects of excess sediment levels on mussels are sublethal, with detrimental effects not immediately apparent (Brim Box and Mossa 1999, p. 101). The physical effects of sediment on mussel habitat appear to be multifold, and include changes in suspended and bed material load; bed sediment composition associated with increased sediment production and runoff in the watershed; channel changes in form, position, and degree of stability; changes in depth or the width and depth ratio that affects light penetration and flow regime; actively aggrading (filling) or degrading (scouring) channels; and changes in channel position. These effects to habitat may dislodge, transport downstream, or leave mussels stranded (Vannote and Minshall 1982, p. 4106; Kanehl and Lyons 1992, pp. 4–5; Brim Box and Mossa 1999, pp. 109–112). For example, many Kansas streams (such as Verdigris and Neosho Rivers) supporting mussels have become increasingly silted in over the past century, reducing habitat for the Neosho mucket and rabbitsfoot (Obermeyer *et al.* 1997a, pp. 113–114).

Increased sedimentation and siltation may explain in part why Neosho mucket and rabbitsfoot are experiencing recruitment failure in some streams. Interstitial spaces in the substrate provide crucial habitat (shelter and nutrient uptake) for juvenile mussel survival. When interstitial spaces are clogged, interstitial flow rates and spaces are reduced (Brim Box and Mossa 1999, p. 100), and this decreases habitat for juvenile mussels. Furthermore, sediment may act as a vector for delivering contaminants, such as nutrients and pesticides, to streams, and juvenile mussels may ingest contaminants adsorbed to silt particles during normal feeding activities. Neosho mucket and rabbitsfoot reproductive strategies depend on clear water (enables fish hosts to see mussel lures) during critical reproductive periods.

Agricultural activities are responsible for much of the sediment affecting rivers in the United States (Waters 1995, p. 170). Sedimentation associated with agricultural land use is cited as one of the primary threats to 7 of the 11 (64 percent) viable rabbitsfoot populations (French Creek, Tippecanoe, Paint Rock, Duck, White, Black, and Strawberry Rivers; Smith *et al.* 2009, Table 1; USACE 2011, pp. 21–22; Indiana Department of Environmental Management (IDEM) 2001, pp. 11–12; EPA 2001, p. 10; Brueggen 2010, pp. 1–2; MDC 2012, *http://mdc.mo.gov/landwater-care/stream-and-watershed-management/;* Environmental Protection Agency Water Quality Assessment Tool, *http://ofmpub.epa.gov/tmdl_waters10/attains_nation_cy.control?p_report_type=T*). In addition, numerous stream segments in the Duck, White, Black, Little, and Strawberry River watersheds are listed as impaired waters under section 303(d) of the Clean Water Act (CWA) by the Environmental Protection Agency (EPA) due to sedimentation associated with agriculture (USACE 2011, p. 21; EPA Water Quality Assessment Tool, *http://ofmpub.epa.gov/tmdl_waters10/attains_nation_cy.control?p_report_type=T*). An impaired water is a water body (i.e., stream reaches, lakes, water body segments) with chronic or recurring monitored violations of the applicable numeric or narrative water quality criteria. An impaired water cannot support one or more of its designated uses (e.g., swimming, the protection and propagation of aquatic life, drinking, industrial supply, etc.).

Once a stream segment is listed as an impaired water, the State must complete a plan to address the issue causing the impairment; this plan is called a Total Maximum Daily Load (TMDL). A TMDL is a calculation of the maximum amount of a pollutant that a water body can receive and still safely meet water quality standards (WQS). Completion of the plan is generally all that is required to remove the stream segment from the EPA's section 303(d) impaired water list and does not mean that water quality has changed. Once the TMDL is completed, the stream segment may be placed on the EPA's section 305(b) list of impaired streams with a completed TMDL (*http://water.epa.gov/lawsregs/lawsguidance/cwa/tmdl/intro.cfm*). For example, some stream segments within the White, Barren, Little River Mountain Fork, and Wabash Rivers, and French Creek have completed TMDL plans and have attained WQS for low dissolved oxygen, pathogens, nutrients, polychlorinated biphenyls (PCBs), and siltation. However, some of these same stream segments still have not attained WQS for lead (Little River Mountain Fork) and mercury (Wabash River).

Impaired streams in the Duck River watershed (approximately 483 rkm (300 rmi)) are losing 5 to 55 percent more soil per year than the natural streams (USACE 2011, pp. 21–22). Unrestricted livestock access occurs on many streams and potentially threatens associated mussel populations (Fraley and Ahlstedt 2000, pp. 193–194). Grazing may reduce water infiltration rates and increase runoff; trampling and vegetation removal increases the probability of erosion (Armour *et al.* 1991, pp. 8–10; Brim Box and Mossa 1999, p. 103).

Developed land can increase sediment loads and increase runoff (Wang *et al.* 2001, pp. 261–262). Hopkins (2009, p.

952) found rabbitsfoot occurrence positively correlated with riparian areas that were 70 percent forested and averaged 15 hectares (37 acres) in the Upper Green River in Ohio. Rabbitsfoot begins to respond negatively to 0.5 percent of developed land within the riparian area (Hopkins 2009, pp. 948–952).

As discussed above, specific impacts on mussels from sediments include reduced feeding and respiratory efficiency, disrupted metabolic processes, reduced growth rates, increased substrata instability, and the physical smothering of mussels. Increased turbidity levels due to siltation can be a limiting factor that impedes the ability of sight-feeding fishes to forage. Turbidity within the rivers and streams during the times that the mussels attempt to attract host fishes may have contributed and may continue to contribute to the decline of the Neosho mucket and rabbitsfoot by reducing their efficiency at attracting the fish hosts necessary for reproduction. In addition, sediment can eliminate or reduce the recruitment of juvenile mussels, interfere with feeding activity, and act as a vector in delivering contaminants to streams. Because the Neosho mucket and rabbitsfoot are filter-feeders and may bury themselves in the substrate, they are exposed to these contaminants contained within suspended particles and deposited in bottom substrates. We conclude that biological and habitat effects due to sedimentation are an ongoing threat to the Neosho mucket and rabbitsfoot.

Chemical Contaminants

Chemical contaminants are ubiquitous in the environment and are considered a major contributor to the decline of mussel species (Richter *et al.* 1997, p. 1081; Strayer *et al.* 2004, p. 436; Wang *et al.* 2007a, p. 2029; Cope *et al.* 2008, p. 451). Chemicals enter the environment through point- and nonpoint-source discharges including spills, industrial and municipal effluents, and residential and agricultural runoff. These sources contribute organic compounds, heavy metals, nutrients, pesticides, and a wide variety of newly emerging contaminants such as pharmaceuticals to the aquatic environment. As a result, water and sediment quality can be degraded to the extent that results in adverse effects to mussel populations.

Cope *et al.* (2008, p. 451) evaluated the pathways of exposure to environmental pollutants for all four freshwater mollusk life stages (free glochidia, encysted glochidia, juveniles, adults) and found that each life stage has both common and unique characteristics that contribute to observed differences in exposure and sensitivity. Almost nothing is known of the potential mechanisms and consequences of waterborne toxicants on sperm viability. In the female mollusk, the marsupial region of the gill is thought to be physiologically isolated from respiratory functions, and this isolation may provide some level of protection from contaminant interference with a female's ability to achieve fertilization or brood glochidia (Cope *et al.* 2008, p. 454). A major exception to this assertion is with chemicals that act directly on the neuroendocrine pathways controlling reproduction (see discussion below). Nutritional and ionic exchange is possible between a brooding female and her glochidia, providing a route for chemicals (accumulated or waterborne) to disrupt biochemical and physiological pathways (such as maternal calcium transport for construction of the glochidial shell). Glochidia can be exposed to waterborne contaminants for up to 36 hours until encystment occurs between 2 and 36 hours, and then from fish host tissue burdens (for example, atrazine), that last from weeks to months and could affect transformation success of glochidia into juveniles (Ingersoll *et al.* 2007, pp. 101–104).

Juvenile mussels typically remain burrowed beneath the sediment surface for 2 to 4 years. Residence beneath the sediment surface necessitates deposit (pedal) feeding and a reliance on interstitial water for dissolved oxygen (Watters 2007, p. 56). The relative importance of exposure of juvenile Neosho mucket and rabbitsfoot to contaminants in overlying surface water, interstitial water, whole sediment, or food has not been adequately assessed. Exposure to contaminants from each of these routes varies with certain periods and environmental conditions (Cope *et al.* 2008, pp. 453 and 457).

The primary routes of exposure to contaminants for adult Neosho mucket and rabbitsfoot are surface water, sediment, interstitial (pore) water, and diet; adults can be exposed when either partially or completely burrowed in the substrate (Cope *et al.* 2008, p. 453). Adult mussels have the ability to detect toxicants in the water and close their valves to avoid exposure (Van Hassel and Farris 2007, p. 6). Adult mussel toxicity and relative sensitivity (exposure and uptake of toxicants) may be reduced at high rather than at low toxicant concentrations because uptake is affected by the prolonged or periodic toxicant avoidance responses (when the avoidance behavior of keeping their valves closed can no longer be sustained for physiological reasons (respiration and ability to feed) (Cope *et al.* 2008, p. 454). Toxicity results based on low-level exposure of adults are similar to estimates for glochidia and juveniles for some toxicants (for example, copper). The duration of any toxicant avoidance response by an adult mussel is likely to vary due to several variables, such as species, age, shell thickness and gape, properties of the toxicant, and water temperature. There is a lack of information on toxicant response(s) for Neosho mucket and rabbitsfoot, but results of tests using glochidia and juveniles may be valuable for protecting adults (Cope *et al.* 2008, p. 454).

Mussels are very intolerant of heavy metals (such as, lead, zinc, cadmium, and copper) compared to commonly tested aquatic organisms. Metals occur in industrial and wastewater effluents and are often a result of atmospheric deposition from industrial processes and incinerators, but also are associated with mine water runoff (for example, Tri-State Mining Area in southwest Missouri) and have been attributed to mussel declines in streams such as Shoal, Center, and Turkey Creeks and Spring River in the Arkansas River basin (Angelo *et al.* 2007, pp. 485–489), which are streams with historical and extant Neosho mucket and rabbitsfoot populations. Heavy metals can cause mortality and affect biological processes, for instance, disrupting enzyme efficiency, altering filtration rates, reducing growth, and changing behavior of freshwater mussels (Keller and Zam 1991, p. 543; Naimo 1995, pp. 351–355; Jacobson *et al.* 1997, p. 2390; Valenti *et al.* 2005, p. 1244; Wang *et al.* 2007b, pp. 2039–2046; Wang *et al.* 2007c, pp. 2052–2055; Wang *et al.* 2010, p. 2053). Mussel recruitment may be reduced in habitats with low but chronic heavy metal and other toxicant inputs (Yeager *et al.* 1994, p. 217; Naimo 1995, pp. 347 and 351–352; Ahlstedt and Tuberville 1997, p. 75). Newly transformed juveniles (age at 5 days) are more sensitive to acute toxicity than glochidia or older juveniles (age at 2 to 6 months) (Wang *et al.* 2010, p. 2062).

Mercury is another heavy metal that has the potential to negatively affect mussel populations. Mercury has been detected throughout aquatic environments as a product of municipal and industrial waste and atmospheric deposition from coal-burning plants. One study on rainbow mussel (*Villosa iris*) concluded that glochidia were more sensitive to mercury than were juvenile mussels, with a median lethal

concentration value of 14 *u*g/L for glochidia and 114 *u*g/L for juvenile mussels (Valenti *et al.* 2005, p. 1242). The chronic toxicity is a test that usually measures sublethal effects (e.g., reduced growth or reproduction) in addition to lethality. These tests are usually longer in duration or conducted during some sensitive period of an organism's life cycle. For this species, the chronic toxicity test showed that juveniles exposed to mercury greater than or equal to 8 *u*g/L exhibited reduced growth (Valenti *et al.* 2005, p. 1245). Mercury also affects oxygen consumption, byssal thread production, and filtration rates (Naimo 1995, Jacobsen *et al.* 1997, and Nelson and Calabrese 1988 *in* Valenti *et al.* 2005, p. 1245). Effects to mussels from mercury toxicity may be occurring in some streams due to illegal dumping, spills, and permit violations. For example, acute mercury toxicity was determined to be the cause of extirpation of diverse mussel fauna for a 112-rkm (70-rmi) reach of the North Fork Holston River (Brown *et al.* 2005, pp. 1455–1457). Of the 11 viable rabbitsfoot populations, 4 populations (French Creek, Duck River, Green River, and Ohio River) currently inhabit river reaches that are impaired by mercury and are listed as impaired waters under section 303(d) of the CWA.

One chemical that is particularly toxic to early life stages of mussels is ammonia. Sources of ammonia include agricultural wastes (animal feedlots and nitrogenous fertilizers), municipal wastewater treatment plants, and industrial waste (Augspurger *et al.* 2007, p. 2026) as well as precipitation and natural processes (decomposition of organic nitrogen) (Goudreau *et al.* 1993, p. 212; Hickey and Martin 1999, p. 44; Augspurger *et al.* 2003, p. 2569; Newton 2003, p. 1243). Therefore, ammonia is considered a limiting factor for survival and recovery of some mussel species due to its ubiquity in aquatic environments and high level of toxicity, and because the highest concentrations typically occur in mussel microhabitats (Augspurger *et al.* 2003, p. 2574). In addition, studies have shown that ammonia concentrations increase with increasing temperature, pH, and low flow conditions (Cherry *et al.* 2005, p. 378; Cooper *et al.* 2005, p. 381; Wang *et al.* 2007, p. 2045), which may be exacerbated by the effects of climate change, and may cause ammonia (unionized and ionized) to become more problematic for juvenile mussels (Wang *et al.* 2007, p. 2045). Sublethal effects include, but may not be limited to, reduced time the valves are held open for respiration and feeding; impaired secretion of the byssal thread (used for substrate attachment), reduced ciliary action impairing feeding, depleted lipid, glycogen, and other carbohydrate stores, and altered metabolism (Goodreau *et al.* 1993, pp. 216–227; Augspurger *et al.* 2003, pp. 2571–2574; Mummert *et al.* 2003, pp. 2548–2552).

Polychlorinated biphenyls (PCBs) are ubiquitous contaminants in the environment due to their widespread use from the 1920s to 1970s as insulating material in electric equipment, such as transformers and capacitors, as well as in heat transfer fluids and in lubricants. PCBs have also been used in a wide range of products, such as plasticizers, surface coatings, inks, adhesives, flame retardants, paints, and carbonless duplicating paper. PCBs were still being introduced into the environment at many sites (such as landfills and incinerators) until the 1990s. The inherent stability and toxicity of PCBs have resulted in them being a persistent environmental problem (Safe 1994 *in* Lehmann *et al.* 2007, p. 356). PCBs are lipophilic (affinity to combine with fats or lipids), adsorb easily to soil and sediment, and are present in the sediment and water column in aquatic environments, making them available to bioaccumulate and induce negative effects in living organisms (Livingstone 2001 *in* Lehmann *et al.* 2007, p. 356). Studies have demonstrated increased PCB concentrations in native freshwater mussels (Ruessler *et al.* 2011, pp. 1, 7), marine bivalves (Krishnakumar *et al.* 1994, p. 249), and nonnative, invasive mollusks (zebra mussels and Asian clams) (Gossiaux *et al.* 1996, p. 379; Lehmann *et al.* 2007, p. 363) in areas with high levels of PCBs. Oxidative stress (imbalance in the normal redox state of cells that causes toxic effects that damage all components of the cell, including proteins, lipids, and DNA) is a direct consequence of exposure to PCBs. Relevant changes, whether directly or indirectly due to oxidative stress, may occur at the organ and organism levels and will likely result in mussel population-wide effects, including reduced fecundity and chronic maladies due to PCB exposure (Lehmann et al. 2007, p. 363). Two of the 11 viable rabbitsfoot populations (18 percent) inhabit waters listed as impaired due to PCBs under section 303(d) of the CWA.

Agriculture, timber harvest, and lawn management practices utilize nutrients and pesticides. These are two broad categories of chemical contaminants that have the potential to negatively impact mussel species. Nutrients, such as nitrogen and phosphorus, primarily occur in runoff from livestock farms, feedlots, heavily fertilized row crops and pastures (Peterjohn and Correll 1984, p. 1471), post timber management activities, and urban and suburban runoff, including leaking septic tanks, and residential lawns.

Studies have shown that excessive nitrogen concentrations can be lethal to the adult freshwater pearl mussel (*Margaritifera margaritifera*) and reduce the life span and size of other mussel species (Bauer 1988, p. 244; Bauer 1992, p. 425). Nutrient enrichment can result in an increase in primary productivity, and the associated algae respiration depletes dissolved oxygen levels. This may be particularly detrimental to juvenile mussels that inhabit the interstitial spaces in the substrate where lower dissolved oxygen concentrations are more likely than on the sediment surface where adults tend to live (Sparks and Strayer 1998, pp. 132–133). For example, Galbraith *et al.* (2008, pp. 48–49) reported a massive die-off of greater than 160 rabbitsfoot specimens at a long-term monitoring site in the Little River, Oklahoma. While the exact cause for the die-off is unknown, the authors speculate that the 2005 Oklahoma drought coupled with high water temperature and extensive blooms of filamentous algae may have resulted in extreme physiological stress. Over-enriched conditions are exacerbated by low flow conditions, such as those experienced during a typical summer season and that may occur with greater frequency and severity as a result of climate change. Three of the 11 viable rabbitsfoot populations (French Creek, Duck River, and Tippecanoe River) are listed as impaired waters under section 303(d) of the CWA due to nutrient enrichment.

Elevated concentrations of pesticide frequently occur in streams due to residential or commercial pesticide runoff, overspray application to row crops, and lack of adequate riparian buffers. Agricultural pesticide applications often coincide with the reproductive and early life stages of mussels, and effects to mussels may be increased during a critical time period (Bringolf *et al.* 2007a, p. 2094). Recent studies tested the toxicity of glyphosate, its formulations, and a surfactant (MON 0818) used in several glyphosate formulations, to early life stages of the fatmucket (*Lampsilis siliquoidea*), a U.S. native freshwater mussel (Bringolf *et al.* 2007a, p. 2094). Studies conducted with juvenile mussels and glochidia determined that the surfactant (MON 0818) was the most toxic of the compounds tested and that *L. siliquoidea* glochidia were the most

sensitive organism tested to date (Bringolf *et al.* 2007a, p. 2094). Roundup®, technical grade glyphosate isopropylamine salt, and isopropylamine were also acutely toxic to juveniles and glochidia (Bringolf *et al.* 2007a, p. 2097). The study of other pesticides, including atrazine, chlorpyrifos, and permethrin, on glochidia and juvenile life stages determined that chlorpyrifos was toxic to both *L. siliquoidea* glochidia and juveniles (Bringolf *et al.* 2007b, pp. 2101 and 2104). The above results indicate the potential toxicity of commonly applied pesticides and the threat to mussel species as a result of the widespread use of these pesticides.

Chemical spills have resulted in the loss of high numbers of mussels (Jones *et al.* 2001, p. 20; Brown *et al.* 2005, p. 1457; Schmerfeld 2006, pp. 12–13) and are considered a serious threat to mussel species. The Neosho mucket and rabbitsfoot are especially threatened by chemical spills because these spills can occur anywhere that highways with tanker trucks, industries, or mines overlap with their distribution.

Other examples of the influence of point- and nonpoint-source pollutants on streams throughout the range of the Neosho mucket and rabbitsfoot include two documented mussel kills in Fish Creek (circa 1988) as a result of manure runoff from a hog farm and a diesel spill (Watters 1988, p. 18). Twelve point-source discharges occur on the Green River (Kentucky State Nature Preserves Commission and The Nature Conservancy 1998, pp. 15–19). The Illinois and Little Rivers are subject to nonpoint-source organic runoff from poultry farming and municipal wastewater. Pharmaceutical chemicals used in commonly consumed drugs are increasingly found in surface waters. A recent nationwide study sampling 139 stream sites in 30 States detected the presence of numerous pharmaceuticals, hormones, and other organic wastewater contaminants downstream from urban development and livestock production areas (Kolpin *et al.* 2002, pp. 1208–1210). Another study in northwestern Arkansas found pharmaceuticals or other organic wastewater constituents at 16 of 17 sites in 7 streams surveyed in 2004 (Galloway *et al.* 2005, pp. 4–22). Toxic levels of exposure to chemicals that act directly on the neuroendocrine pathways controlling reproduction can cause premature release of viable or nonviable glochidia. For example, the active ingredient in many human prescription antidepressant drugs belonging to the class of selective serotonin reuptake inhibitors may exert negative reproductive effects on mussels because of the drug's action on serotonin and other neuroendocrine pathways (Cope *et al.* 2008, p. 455). Pharmaceuticals or organic wastewater constituents are generally greater downstream of wastewater treatment facilities (Galloway *et al.* 2005, p. 28). Pharmaceuticals that alter mussel behavior and influence successful attachment of glochidia on fish hosts may have population-level implications for the Neosho mucket and rabbitsfoot.

The information presented in this section represents some of the threats from chemical contaminants that have been documented both in the laboratory and field and demonstrates that chemical contaminants pose a substantial threat to Neosho mucket and rabbitsfoot. A cursory examination of land use trends, nonpoint- and point-source discharges, and the list of impaired waters under section 303(d) of the CWA suggests that all 11 rabbitsfoot populations currently considered viable may be subjected to the subtle, pervasive effects of chronic, low-level contamination that is ubiquitous in these watersheds. For example, the 8 of the 11 (73 percent) streams with viable rabbitsfoot populations are listed as impaired waters under section 303(d) of the CWA. Reasons for impairment include mercury, nutrients, organic enrichment and dissolved oxygen depletion, pathogens, turbidity (sediment), and PCBs. Potential effects from contaminant exposure may result in death, reduced growth, altered metabolic processes, or reduced reproduction. We conclude that biological and habitat effects of chemical contaminants are an ongoing threat contributing to the decline of Neosho mucket and rabbitsfoot populations.

Mining

Gravel, coal, and metal mining are activities negatively affecting water quality in Neosho mucket and rabbitsfoot habitat. Instream and alluvial gravel mining has been implicated in the destruction of mussel populations (Hartfield 1993, pp. 136–138; Brim Box and Mossa 1999, pp. 103–104). Negative effects associated with gravel mining include stream channel modifications (altered habitat, disrupted flow patterns, sediment transport), water quality modifications (increased turbidity, reduced light penetration, increased temperature), macroinvertebrate population changes (elimination), and changes in fish populations, resulting from adverse effects to spawning and nursery habitat and food web disruptions (Kanehl and Lyons 1992, pp. 4–10). Gravel mining activities continue to be a localized threat in several streams with viable rabbitsfoot populations (Ohio, Tennessee, White, Strawberry, and Little Rivers). In the lower Tennessee River, instream mining occurs in 18 reaches totaling 77.1 rkm (47.9 rmi) between the Duck River confluence and Pickwick Landing Dam (Hubbs 2010, pers. comm.).

Coal mining activities, resulting in heavy metal-rich drainage, and associated sedimentation has adversely affected many drainages with rabbitsfoot populations, including portions of the upper Ohio River system in Kentucky, Pennsylvania, and West Virginia; the lower Ohio River system in eastern Illinois; the Rough River drainage in western Kentucky; and the upper Cumberland River system in Kentucky and Tennessee (Ortmann 1909 *in* Butler 2005, p. 102; Gordon 1991, pp. 4 and 5; Layzer and Anderson 1992 *in* Butler 2005, p. 102). Numerous mussel toxicants, such as polycyclic aromatic hydrocarbons and heavy metals (copper, manganese, and zinc) from coal mining contaminate sediments when released into streams (Ahlstedt and Tuberville 1997, p. 75). Low pH commonly associated with mine runoff can reduce glochidial attachment rates on host fish (Huebner and Pynnonen 1990, pp. 2350–2353). Thus, acid mine runoff may have local effects on mussel recruitment and may lead to mortality due to improper shell development or erosion.

Metal mining (lead, cadmium, and zinc) in the Tri-State Mining Area (15,000 square kilometers: 5,800 square miles) in Kansas, Missouri, and Oklahoma) has negatively affected Center and Shoal Creeks and the Spring River. It has been implicated in the loss of Neosho mucket and rabbitsfoot from portions of these streams (Obermeyer *et al.* 1997b, p. 114). A study by the Kansas Department of Health and Environment documented a strong negative correlation between the distribution and abundance of native mussels, including Neosho mucket, and sediment concentrations of lead, zinc and cadmium in the Spring River system (Angelo *et al.* 2007, pp. 477–493). Sediment and water quality samples exceeded EPA 2006 threshold effect concentrations for cadmium, lead, and zinc at numerous sampling locations within the Tri-State Mining Area (Gunter 2007, pers. comm.). These physical habitat threats combined with poor water quality and agricultural nonpoint-source pollution are serious threats to all existing mussel fauna in the basin.

In the St. Francis River basin, past metal mining and smelting (early

eighteenth century through the 1940s) have resulted in continuing heavy metal (lead, iron, nickel, copper, cobalt, zinc, cadmium, chromium) contamination of surface waters in the area upstream of the extant rabbitsfoot population. Recent and historical metals mining and smelting produced large volumes of contaminated wastes. Most of these mining wastes are stored behind poorly constructed dams and impoundments (Roberts 2008, pers. comm.). Wappapello Reservoir and the confluence with Big Creek (with habitat degradation primarily from mining activities) may effectively limit the distribution of the rabbitsfoot in the St. Francis River. We conclude that biological and habitat effects due to mining activities are a significant and ongoing threat contributing to declining Neosho mucket and rabbitsfoot populations.

Oil and Natural Gas Development

Oil and natural gas resources are present in some of the watersheds that are known to support rabbitsfoot, including the Allegheny and Middle Fork Little Red Rivers and two watersheds with viable populations (White River and French Creek). Exploration and extraction of these energy resources can result in increased siltation, a changed hydrograph (graph showing changes in the discharge of a river over a period of time), and altered water quantity and quality even at considerable distances from the mine or well field because effects are carried downstream from the original source. Rabbitsfoot habitat in streams can be threatened by the cumulative effects of multiple mines and well fields (adapted from Service 2008, p. 11).

Recently, oil and gas exploration has been able to expand in areas of shale due to new technologies (i.e., hydraulic fracturing and horizontal drilling), making access possible to oil and gas reserves in areas that were previously inaccessible. Extraction of these resources, particularly natural gas, has increased dramatically in recent years in Arkansas, Oklahoma, Pennsylvania, and West Virginia. Although oil and natural gas extraction generally occurs away from the river, extensive road and pipeline networks are required to construct and maintain wells and transport the extracted resources. These road and pipeline networks frequently cross or occur near tributaries, contributing sediment to the receiving waterway. In addition, the construction and operation of wells may result in the discharge of chemical contaminants and subsurface minerals.

Several of the viable rabbitsfoot populations occur in active shale basins (areas of shale gas formations) (*http://www.eia.gov/analysis/studies/worldshalegas/*). In 2006, more than 3,700 permits were issued for oil and gas wells by the Pennsylvania Department of Environmental Protection, which also issued 98 citations for permit violations at 54 wells (Hopey 2007; adapted from Service 2008, p. 13). A natural gas pipeline company pled guilty to three violations of the Act in 2011 for unauthorized take of a federally endangered mussel in Arkansas as a result of a large amount of sediment being transported from pipeline right-of-ways to tributary streams in the affected watershed (Department of Justice 2011, pers. comm.). Where oil and natural gas development occurs within the range of extant Neosho mucket and rabbitsfoot populations, we conclude that the resulting biological and habitat effects are a significant and ongoing threat contributing to the decline of both species.

Conservation Measures

Nonregulatory conservation efforts that are or have addressed range curtailment include monitoring of the species distribution and status and habitat enhancement and restoration projects. Survey work encompassing the entire range of the Neosho mucket has been completed for all four States. The Service and its many State and Federal partners have funded projects to private landowners to enhance riparian habitat in many streams with Neosho mucket and rabbitsfoot populations. For instance, specific watershed-level projects that have benefited habitat for the rabbitsfoot include the critically important populations in the Green and Duck Rivers. Another example includes the State of Kentucky securing 100,000 acres of agricultural riparian lands in the upper Green River watershed. Other efforts have focused on sediment remediation work in rabbitsfoot streams. Reservoir releases from dams have been modified in recent years improving water quality and habitat conditions in many tailwaters occupied by rabbitsfoot. Flow improvements below dams have enabled partners to attempt the reintroduction of listed species such as the rabbitsfoot. TVA has modified the Tims Ford Dam operations on the Elk River that will add 30 river miles of good habitat upstream from Fayetteville and in the dam tailwaters. TVA has committed to water quality and biological monitoring for a period of 10 years.

Methods have been devised and implemented for the propagation of Neosho mucket and rabbitsfoot. The States of Kansas and Missouri have released thousands of juvenile Neosho mucket individuals in the Fall, Verdigris, and Spring Rivers. The State of Kansas reintroduced Neosho mucket at two sites in the Cottonwood River. The State of Alabama reintroduced rabbitsfoot in Limestone Creek. Similar efforts to augment rabbitsfoot populations in Kentucky are under way.

The Service is processing Safe Harbor Agreements and Candidate Conservation Agreements with Assurances with private landowners to conserve aquatic species. Rabbitsfoot is one of the species included in two programmatic Safe Harbor Agreements (SHA) in Arkansas. Implementation of the upper Little Red River SHA began in 2007, and approximately 12,000 acres have been enrolled to date. This SHA is currently undergoing permit amendment to add rabbitsfoot, but the SHA already covers another mussel (speckled pocketbook) and conservation measures currently being implemented on enrolled lands will benefit rabbitsfoot. A similar programmatic SHA is currently in the final stages of development and awaiting permit approval from the Service in the Saline, Ouachita, and Caddo Rivers (headwaters) watershed.

Summary of Factor A

The decline of mussels in the eastern United States is primarily the result of long-lasting direct and secondary effects of habitat alterations such as impoundments, channelization, sedimentation, chemical contaminants, oil and gas development, and mining, and it is reasonable to conclude that the changes in the river basins historically and currently occupied by the species are the cause of population-level (river basin) effects. Historical population losses due to impoundments have probably contributed more to the decline and range reductions of the Neosho mucket and rabbitsfoot than any other single factor. Seven of the 11 (64 percent) viable rabbitsfoot populations (Ohio, Green, Tippecanoe, Tennessee, Duck, White, and Little Rivers) occur downstream of main stem impoundments that make these populations more susceptible to altered habitat quality and quantity associated with the impoundment and dam operation, which may be exacerbated during stochastic events such as droughts and floods. Sedimentation resulting from a variety of sources such as channelization, agricultural and silvicultural practices, and construction

activities has degraded Neosho mucket and rabbitsfoot habitat and altered biological processes essential to their survival. For example, sedimentation associated with agricultural land use is cited as one of the primary threats to 7 of the 11 (64 percent) streams with viable rabbitsfoot populations.

Land use conversion, particularly urbanization that increases impervious surfaces in watersheds (impervious surface increases flood intensity and duration), channelization, and instream gravel and sand mining alter natural hydrology and stream geomorphology characteristics that also degrade mussel habitat in streams that support the Neosho mucket and rabbitsfoot. Contaminants associated with industrial and municipal effluents, agricultural practices, and mining degrade water and sediment quality leading to environmental conditions that have lethal and sublethal effects to Neosho mucket and rabbitsfoot, particularly the highly sensitive early life stages. Eight of the 11 (73 percent) streams with viable rabbitsfoot populations are listed as impaired waters under section 303(d) of the CWA, which means that the rabbitsfoot may be subjected to the subtle, pervasive effects of chronic, low-level contamination that is ubiquitous in these watersheds. Chronic contamination can affect the mussels in a variety of ways including sublethal effects (such as suppressed immune systems and effects to reproduction and fecundity from neuroendocrine disrupters) and lethal effects (such as sediment smothers and disruption of other metabolic processes).

In summary, we have determined that impoundments, channelization, sedimentation, chemical contaminants, mining, and oil and natural gas development are ongoing threats to the Neosho mucket and rabbitsfoot and their habitat that are expected to continue into the future. Although efforts have been made to restore habitat in some areas, these threats are still ongoing, as evidenced by population declines and range reduction.

*Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes*

The Neosho mucket was valuable in the pearl button industry (1800s to early 1940s), and historical episodes of overharvest in the Neosho River may have contributed to its decline (Obermeyer *et al.* 1997b, p. 115). The rabbitsfoot was never a valuable shell for the commercial pearl button industry (Meek and Clark 1912, p. 15; Murray and Leonard 1962, p. 65), nor the cultured pearl industry (Williams and Schuster 1989, p. 23), and hence these activities were probably not significant factors in its decline. However, it was noted occasionally in commercial harvests as evidenced from mussel cull piles (Isely 1924; Parmalee *et al.* 1980, p. 101). Currently, Neosho mucket and rabbitsfoot are not commercially valuable species but may be increasingly sought by collectors as they become rarer. Although scientific collecting is not thought to represent a significant threat, unregulated collecting could adversely affect localized Neosho mucket and rabbitsfoot populations.

Commercial mussel harvest is illegal in some States (for example, Indiana and Ohio), but regulated in others (for example, Arkansas, Alabama, Kentucky, and Tennessee). These species may be inadvertently harvested by inexperienced commercial harvesters unfamiliar with species identification. Although illegal harvest of protected mussel beds occurs (Watters and Dunn 1995, pp. 225 and 247–250), commercial harvest is not known to have a significant effect on the Neosho mucket and rabbitsfoot.

Conservation Measures

We are not aware of any nonregulatory actions that are being conducted to ameliorate overutilization for commercial, recreational, scientific, or educational purposes at this time.

Summary of Factor B

Though it is possible that the intensity of inadvertent or illegal harvest may increase in the future, we have no evidence that this stressor is currently increasing in severity. On the basis of this analysis, we find that overutilization for commercial, recreational, scientific, or educational purposes is not a current threat to the Neosho mucket or rabbitsfoot in any portion of their range at this time nor is likely to become so in the future.

*Factor C. Disease or Predation*

Little is known about diseases in freshwater mussels (Grizzle and Brunner 2007, p. 6). However, mussel die-offs have been documented in streams inhabited by rabbitsfoot (Neves 1986, pp. 8–11), and some researchers believe that disease may be a factor contributing to the die-offs (Buchanan 1986, p. 53; Neves 1986, p. 11). Mussel parasites include water mites, trematodes, oligochaetes, leeches, copepods, bacteria, and protozoa (Grizzle and Brunner 2007, p. 4). Generally, parasites are not suspected of being a major limiting factor in the species' survival (Oesch 1984, p. 6). However, mite and trematode burdens can affect reproductive output and physiological condition, respectively, in mussels (Gangloff *et al.* 2008, pp. 28–30). Stressors that reduce fitness may make mussels more susceptible to parasites (Butler 2007, p. 90). Furthermore, nonnative mussels may carry diseases and parasites that are potentially devastating to the native mussel fauna on an individual or population-level basis (river basin), including Neosho mucket and rabbitsfoot (Strayer 1999b, p. 88). However, while individual mussels or beds of mussels historically or currently may have been affected by disease or parasites, we have no evidence that the severity of disease or parasite infestations impact either mussel on a population level (river basin).

The muskrat (*Ondatra zibethicus*) is cited as the most prevalent mussel predator (Kunz 1898, p. 328; Convey *et al.* 1989, pp. 654–655; Hanson *et al.* 1989, pp. 15–16). Muskrat predation may limit the recovery potential of endangered or threatened mussels or contribute to local extirpations of previously stressed populations, according to Neves and Odom (1989, p. 940), who consider it, however, primarily a seasonal or localized threat. Galbraith *et al.* (2008, p. 49) hypothesized that predation may have exacerbated rabbitsfoot mortality in the Little River, Oklahoma, during the 2005 drought. Harris *et al.* (2007, p. 31) reported numerous dead rabbitsfoot from muskrat middens (mound or deposit containing shells) in the Spring River, Arkansas. Other mammals (for example, raccoon, mink, otter, hogs, and rats), turtles, and aquatic birds also occasionally feed on mussels (Kunz 1898, p. 328; Neck 1986, pp. 64–65). Recently, predation of Neosho mucket by reintroduced otters has been documented in a mussel bed also supporting rabbitsfoot in the Spring River, Kansas (Barnhart 2003, pp. 16–17), and likely occurs elsewhere. Muskrat predation has been documented for Neosho mucket and rabbitsfoot, but the overall threat is generally considered insignificant.

Some species of fish feed on mussels (for example, common carp (*Cyprinus carpio*), freshwater drum (*Aplodinotus grunniens*), and redear sunfish (*Lepomis microlophus*)) and potentially on young Neosho mucket and rabbitsfoot. Various invertebrates, such as flatworms, hydra, nonbiting midge larvae, dragonfly larvae, and crayfish, feed on juvenile mussels (Zimmerman *et al.* 2003, p. 28). Although predation by naturally occurring predators is a normal aspect of the population dynamics of a healthy mussel population, predation may

amplify declines in small populations of this species. In addition, the potential now exists for black carp (*Mylopharyngodon piceus*), a mollusk-eating Asian fish recently introduced into the waters of the United States (Strayer 1999b, p. 89), to eventually disperse throughout the range of the Neosho mucket and rabbitsfoot. However, we have no evidence that the severity of predation has reached levels where populations (river basin) of either mussel have been historically or recently impacted or should be impacted in the future based on current information.

The life cycle of freshwater mussels is intimately related to that of the freshwater fish they use as hosts for their parasitic glochidia. For this reason, diseases that affect populations of freshwater fishes also pose a significant threat to mussels in general. Viral hemorrhagic septicemia (VHS) disease has been confirmed from much of the Great Lakes and St. Lawrence River system. If the VHS virus successfully migrates out of Clearfork Reservoir or the Great Lakes and into the Ohio and Mississippi River basins, it could spread rapidly and cause fish kills throughout the river basins. Few Neosho mucket and rabbitsfoot populations are currently recruiting at sustainable levels, and fish kills, particularly if VHS infects suitable fish hosts, could further reduce glochidia encounters with fish hosts and exacerbate mussel recruitment reductions. However, we have no evidence that fish kills affecting potential fish hosts of these two mussel species have had population effects historically or recently.

Conservation Measures

Nonregulatory conservation measures implemented include control of the Asian carp and black carp. Both species are listed under the Injurious Wildlife Provision of the Lacey Act, which prohibits the import, export, and transport between States. Numerous States within the range of Neosho mucket and rabbitsfoot are engaging in efforts (such as, eradication) to minimize the effects of Asian carp on native fishery resources.

Summary of Factor C

Disease in mussels is poorly known and not currently considered a threat rising to a level such that it would have an effect on the Neosho mucket, nor the rabbitsfoot, as a whole. Studies indicate that, in some localized areas, disease and predation may have negative effects on mussel populations. Though it is possible that the intensity of disease or predation may increase in the future, we have no evidence that this stressor is currently increasing in severity.

*Factor D. The Inadequacy of Existing Regulatory Mechanisms*

The objective of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (CWA) (33 U.S.C. 1251 *et seq.*), is to restore and maintain the chemical, physical, and biological integrity of the nation's waters by preventing point and nonpoint pollution sources. The CWA has a stated goal that ''. . . wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved by July 1, 1983.'' States are responsible for setting and implementing water quality standards that align with the requirements of the CWA. Overall, implementation of the CWA could benefit both mussel species through the point and nonpoint programs.

Nonpoint source (NPS) pollution comes from many diverse sources, unlike pollution from industrial and sewage treatment plants. NPS pollution is caused by rainfall or snowmelt moving over and through the ground. As the runoff moves, it transports natural and human-made pollutants. While some pollutants may be ''deposited,'' some may remain in suspension (dissolved) as they are transported through various waterbodies. States report that nonpoint source pollution is the leading remaining cause of water quality problems. The effects of nonpoint-source pollutants on specific waters vary and may not always be fully assessed. However, these pollutants have harmful effects on fisheries and wildlife (*http://www.epa.gov/owow_keep/NPS/whatis.html*).

Sources of NPS pollution within the watersheds occupied by both mussels include timber clearcutting, clearing of riparian vegetation, urbanization, road construction, and other practices that allow bare earth to enter streams (The Nature Conservancy 2004, p. 13). Numerous stream segments in the Duck, White, Black, Little, and Strawberry River watersheds are listed as impaired waters under section 303(d) of the CWA by EPA due to sedimentation associated with agriculture (USACE 2011, p. 21; EPA Water Quality Assessment Tool, *http://ofmpub.epa.gov/tmdl_waters10/attains_nation_cy.control?p_report_type=T*). For example, impaired streams in the Duck River watershed (483 rkm (300 rmi)) are losing 5 to 55 percent more soil per year than streams not labeled as impaired (USACE 2011, pp. 21–22). Currently, the CWA may not adequately protect Neosho mucket and rabbitsfoot habitat from NPS pollution. The Service has no information concerning the implementation of the CWA regarding NPS pollution specific to protection of both mussels. However, insufficient implementation could become a threat to both mussel species if they continue to decline in numbers or if new information becomes available.

Point-source discharges within the range of the Neosho mucket and rabbitsfoot have been reduced since the enactment of the CWA. Despite some reductions in point-source discharges, adequate protection may not be provided by the CWA for filter-feeding organisms that can be affected by extremely low levels of contaminants (see *Chemical Contaminants* discussion under Factor A). The Neosho mucket and rabbitsfoot continue to decline due to the effects of habitat destruction, poor water quality, contaminants, and other factors. Eight of the 11 (73 percent) streams with viable rabbitsfoot populations are listed as impaired waters under section 303(d) of the CWA. Reasons for impairment include mercury, nutrients, organic enrichment, dissolved oxygen depletion, pathogens, turbidity (sediment), and PCBs. In addition, numerous tributaries within watersheds supporting viable Neosho mucket and rabbitsfoot populations also are listed as impaired waters under section 303(d) of the CWA, which means that both species may be subjected to greater, albeit subtle, pervasive effects of chronic, low-level contamination that is ubiquitous in these watersheds. However, we are aware of no specific information about the sensitivity of the Neosho mucket and rabbitsfoot to common point-source pollutants like industrial and municipal pollutants and very little information on other freshwater mussels. Because little information is available about water quality parameters necessary to fully protect freshwater mussels, such as the Neosho mucket and rabbitsfoot, it is difficult to determine whether the CWA is adequately addressing the threats to these species. However, given that a goal of the CWA is to establish water quality standards that protect shellfish and given that documented declines of these mussel species still continue due to poor water quality and other factors, we take a conservative approach in favor of the species and conclude that the CWA has been insufficient to reduce or remove the threats to the Neosho mucket and rabbitsfoot.

Summary of Factor D

In summary, the CWA has a stated goal to establish water quality standards that protect aquatic species, including the Neosho mucket and rabbitsfoot. However, the CWA has generally been insufficient at protecting mussels, and adequate water quality criteria that are protective of all life stages, particularly glochidia and juveniles, may not have been established. Little information is known about specific sensitivities of mussels to various pollutants, but both species continue to decline due to the effects of habitat destruction, poor water quality, contaminants, and other factors.

*Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence*

Population Fragmentation and Isolation

Population fragmentation and isolation prohibit the natural interchange of genetic material between populations. Most of the remaining Neosho mucket and rabbitsfoot populations are small and geographically isolated, and, thus, are susceptible to genetic drift, inbreeding depression, and stochastic changes to the environment, such as toxic chemical spills (Smith 1990, pp. 311–321; Watters and Dunn 1995, pp. 257–258; Avise and Hamrick 1996, pp. 463–466). For example, the Spring River (White River basin) and Muddy Creek (Ohio River basin) rabbitsfoot populations are the only small populations not isolated from a viable population. Three marginal populations (Alleghany River and LeBoeuf and Conneauttee Creeks), considered metapopulations with French Creek, also are not isolated from a viable rabbitsfoot population (French Creek). However, 41 of 51 extant rabbitsfoot populations (80 percent) are isolated from other extant populations, excluding those discussed above and the Strawberry, Tennessee, and Ohio Rivers, which are viable populations that are not isolated from another viable population (Black River) or each other (lower Tennessee and Ohio Rivers).

Inbreeding depression can result in early mortality, decreased fertility, smaller body size, loss of vigor, reduced fitness, and various chromosome abnormalities (Smith 1990, pp. 311–321). A species' vulnerability to extinction is increased when they are patchily distributed due to habitat loss and degradation (Noss and Cooperrider 1994, pp. 58–62; Thomas 1994, p. 373). Although changes in the environment may cause populations to fluctuate naturally, small and low-density populations are more likely to fluctuate below a minimum viable population size (the minimum or threshold number of individuals needed in a population to persist in a viable state for a given interval) (Shaffer 1981, p. 131; Shaffer and Samson 1985, pp. 148–150; Gilpin and Soulé 1986, pp. 25–33). Furthermore, this level of isolation makes natural repopulation of any extirpated population unlikely without human intervention. Population isolation prohibits the natural interchange of genetic material between populations, and small population size reduces the reservoir of genetic diversity within populations, which can lead to inbreeding depression (Avise and Hambrick 1996, p. 461).

Neosho mucket and rabbitsfoot were once widespread throughout their respective ranges with few natural barriers to prevent migration (via fish host species) among suitable habitats. However, construction of dams extirpated many Neosho mucket and rabbitsfoot populations and isolated others. Recruitment reduction or failure is a potential problem for many small Neosho mucket and rabbitsfoot populations rangewide, a potential condition exacerbated by their reduced range, increasingly small populations, and increasingly isolated populations. If these trends continue, further significant declines in total population size and subsequent reduction in long-term survivability may be observed in the future.

The likelihood is high that some rabbitsfoot and Neosho mucket populations are below the effective population size (EPS—the number of individuals in a population who contribute offspring to the next generation), based on restricted distribution and populations only represented by a few individuals, and achieving the EPS is necessary for a population to adapt to environmental change and maintain long-term viability. Isolated populations eventually are extirpated when population size drops below the EPS or threshold level of sustainability (Soulé 1980, pp. 162–164). Evidence of recruitment in many populations of these two species is scant, making recruitment reduction or outright failure suspect. These populations may be experiencing the bottleneck effect of not attaining the EPS. Small, isolated, below the EPS-threshold populations of short-lived species (most fish hosts) theoretically die out within a decade or so, while below-threshold populations of long-lived species, such as the Neosho mucket and rabbitsfoot, might take decades to die out even given years of total recruitment failure. Without genetic interchange, small, isolated populations could be slowly expiring, a phenomenon termed the extinction debt (Tilman *et al.* 1994, pp. 65–66). Even given the absence of existing or new anthropogenic threats, disjunct populations may be lost as a result of current below-threshold effective population size. Additionally, evidence indicates that general habitat degradation continues to decrease habitat patch size, further contributing to the decline of Neosho mucket and rabbitsfoot populations.

We find that fragmentation and isolation of small remaining populations of the Neosho mucket and rabbitsfoot are current and ongoing threats to both species throughout all of their ranges and will continue into the future. Further, stochastic events may play a magnified role in population extirpation when small, isolated populations are involved.

Invasive Nonindigenous Species

Various invasive or nonnative species of aquatic organisms are firmly established in the range of the Neosho mucket and rabbitsfoot. The nonnative, invasive species that poses the most significant threat is the zebra mussel, *Dreissena polymorpha,* introduced from Europe. Its invasion poses a threat to mussel faunas in many regions, and species extinctions are expected as a result of its continued spread in the eastern United States (Ricciardi *et al.* 1998, p. 613). Strayer (1999b, pp. 75–80) reviewed in detail the mechanisms by which zebra mussels affect native mussels. Zebra mussels attach in large numbers to the shells of live native mussels and are implicated in the loss of entire native mussel beds. Fouling effects include impeding locomotion (both laterally and vertically), interfering with normal valve movements, deforming valve margins, and locally depleting food resources and increasing waste products. Heavy infestations of zebra mussels on native mussels may overly stress the animals by reducing their energy stores. They may also reduce food concentrations to levels too low to support reproduction, or even survival in extreme cases. Zebra mussels also may affect Neosho mucket and rabbitsfoot through filtering and removing their sperm and possibly glochidia from the water column, thus reducing reproductive potential. Habitat for native mussels also may be degraded by large deposits of zebra mussel pseudofeces (undigested waste material passed out of the incurrent siphon) (Vaughan 1997, p. 11).

Overlapping much of the current range of the Neosho mucket and rabbitsfoot, zebra mussels have been

detected or are established in Neosho mucket (Neosho and Verdigris Rivers) and rabbitsfoot streams (Ohio, Allegheny, Green, Tennessee, White, and Verdigris Rivers, and French and Bear Creeks). Zebra mussel populations appear to be maintained primarily in streams with barge navigation (Stoeckel *et al.* 2003, p. 334). As zebra mussels may maintain high densities in big rivers, large tributaries, and below infested reservoirs, rabbitsfoot populations in these affected areas have the potential to be significantly affected. In addition, there is long-term potential for zebra mussel invasions into other systems that currently harbor Neosho mucket and rabbitsfoot populations. However, evidence is mounting in some northern streams where there is no barge navigation (French Creek and Tippecanoe River) and southern ones with barge traffic (Tennessee River) that the zebra mussel threat to native mussels may be minimal because native freshwater mussel populations are able to survive when zebra mussel abundance is low (Butler 2005, p.116; Fisher 2009, pers. comm.).

The Asian clam (*Corbicula fluminea*) has spread throughout the range of Neosho mucket and rabbitsfoot since its introduction in the early twentieth century. It competes with native mussels, particularly juveniles, for resources such as food, nutrients, and space (Neves and Widlak 1987, p. 6; Leff *et al.* 1990, p. 414), and may ingest sperm, glochidia, and newly metamorphosed juveniles of native mussels (Strayer 1999b, p. 82; Yeager *et al.* 2000, p. 255). Periodic die-offs of Asian clams may produce enough ammonia and consume enough dissolved oxygen to kill native mussels (Strayer 1999b, p. 82). Yeager *et al.* (2000, pp. 257–258) determined that high densities of Asian clams negatively affect the survival and growth of newly metamorphosed juvenile mussels and thus reduced recruitment. Dense Asian clam populations actively disturb sediments that may reduce habitat for juveniles of native mussels (Strayer 1999b, p. 82).

Asian clam densities vary widely in the absence of native mussels or in patches with sparse mussel concentrations, but Asian clam density is never high in dense mussel beds, indicating that the clam is unable to successfully invade small-scale habitat patches with high unionid biomass (Vaughn and Spooner 2006, pp. 334–335). The invading clam, therefore, appears to preferentially invade sites where mussels are already in decline (Strayer 1999b, pp. 82–83; Vaughn and Spooner 2006, pp. 332–336) and does not appear to be a causative factor in the decline of mussels in dense beds. However, an Asian clam population that thrives in previously stressed, sparse mussel populations might exacerbate mussel decline through competition and by impeding mussel population expansion (Vaughn and Spooner 2006, pp. 335–336).

A molluscivore (mollusk eater), the introduced black carp (*Mylopharyngodon piceus*), is a potential threat to Neosho mucket and rabbitsfoot (Strayer 1999b, p. 89). It has been proposed for widespread use by aquaculturists to control snails, the intermediate host of a trematode (flatworm) parasite affecting catfish in ponds in the southeast and lower midwest. They are known to feed on various mollusks, including mussels and snails, in China. They are the largest of the Asiatic carp species, reaching more than 1.2 meters (4 feet) in length (Nico and Williams 1996, p. 6). Foraging rates for a 4-year-old fish average 1.4–1.8 kg (3 or 4 pounds) a day, indicating that a single individual could consume 9,072 kilograms (10 tons) of native mollusks during its lifetime (MICRA 2005, p. 1). In 1994, 30 black carp escaped from an aquaculture facility in Missouri during a flood. The escape of nonsterile black carp is considered imminent by conservation biologists (Butler 2007, pp. 95–96). The black carp was officially added to the Federal list of injurious wildlife species on October 18, 2007 (72 FR 59019).

The round goby (*Neogobius melanostomus*) is another nonnative, invasive fish species released in the 1980s that is well established and likely to spread through the Mississippi River system (Strayer 1999b, pp. 87–88). This species is an aggressive competitor of similar-sized benthic fishes (sculpins and darters), as well as a voracious carnivore, despite its size (less than 25.4 centimeters (10 inches) in length), preying on a variety of foods, including small mussels and fishes that could serve as glochidial hosts (Strayer 1999b, p. 88; Janssen and Jude 2001, p. 325). Round gobies may, therefore, pose a threat to Neosho mucket and rabbitsfoot reproduction.

The golden alga (*Prymnesium parvum)* is an invasive marine or estuarine algae that likely originated in Europe (Barkoh and Fries 2010, p. 2). Golden alga is found throughout 20 States in the United States. Algae blooms and fish kills have been reported in the following States that overlap the range of Neosho mucket and rabbitsfoot: Arkansas, Oklahoma, Alabama, Louisiana, Mississippi, Georgia, West Virginia, and Kentucky (Hambright 2012, p. 33). Golden alga blooms have been associated with mine and gas outfalls, specifically high chlorides (Sextone 2012, p. 1). Golden alga can give off toxins, when inorganic nitrogen and phosphorous are scarce, that are lethal to gill-breathing organisms, such as mussels and fishes. The toxins also can kill other invertebrates, planktonic algae, and bacteria (Barkoh and Fries 2010, p. 1). A golden alga bloom can be detrimental to Neosho mucket and rabbitsfoot by directly killing individuals and fish hosts and destroying their food base. Nonnative, invasive species, such as those described above, are an ongoing threat to the Neosho mucket and rabbitsfoot. This threat is likely to increase as these and potentially other invasive species expand their occupancy within the ranges of the Neosho mucket and rabbitsfoot through displacement, recruitment interference, and direct predation of the mussels and their fish hosts.

Temperature

Natural temperature regimes can be altered by impoundments, tailwater releases from dams, industrial and municipal effluents, and changes in riparian habitat. Low temperatures can significantly delay or prevent metamorphosis in mussels (Watters and O'Dee 1999, pp. 454–455). Cold water effluent below dams may negatively impact populations; rabbitsfoot were less abundant and in poor condition below a cold water outflow on the Little River, compared to two other sites upstream (Galbraith and Vaughn 2011, p. 198). Low water temperatures caused by dam releases also may disrupt seasonal patterns in reproduction on the Little River (Galbraith and Vaughn 2009, pp. 43–44).

Exact critical thermal limits for survival and normal functioning of many freshwater mussel species are unknown. However, high temperatures can reduce dissolved oxygen concentrations in the water, which slows growth, reduces glycogen stores, impairs respiration, and may inhibit reproduction (Fuller 1974, pp. 240–241). Thermally sensitive species decrease their water filtering and oxygen consumption at higher temperatures (Spooner and Vaughn 2008, p. 314). Although we do not have physiological data on rabbitsfoot and Neosho mucket, closely related species, the plain pocketbook (*Lampsilis cardium)* and the pimpleback (*Quadrula pustulosa),* are thermally sensitive (Spooner and Vaughn 2008, p. 313). Water temperature increases have been documented to shorten the period of

glochidial encystment, reduce righting speed (various reflexes that tend to bring the body into normal position in space and resist forces acting to displace it out of normal position), and slow burrowing and movement responses (Bartsch *et al.* 2000, p. 237; Watters *et al.* 2001, p. 546; Schwalb and Pusch 2007, pp. 264–265). Several studies have documented the influence of temperature on the timing aspects of mussel reproduction (Gray *et al.* 2002, p. 156; Allen *et al.* 2007, p. 85; Steingraeber *et al.* 2007, pp. 303–309). Peak glochidial releases are associated with water temperature thresholds that can be thermal minimums or maximums, depending on the species (Watters and O'Dee 2000, p. 136).

Alterations in temperature regimes in streams, such as those described above, are an ongoing threat to the Neosho mucket and rabbitsfoot. This threat is likely to continue and increase in the future due to additional navigation or water supply projects and as land use conversion to urban uses increases within the entire ranges of the Neosho mucket and rabbitsfoot.

Climate Change

Our analyses under the Act include consideration of ongoing and projected changes in climate. The terms ''climate'' and ''climate change'' are defined by the Intergovernmental Panel on Climate Change (IPCC). ''Climate'' refers to the mean and variability of different types of weather conditions over time, with 30 years being a typical period for such measurements, although shorter or longer periods also may be used (IPCC 2007, p. 78). The term ''climate change'' thus refers to a change in the mean or variability of one or more measures of climate (e.g., temperature or precipitation) that persists for an extended period, typically decades or longer, whether the change is due to natural variability, human activity, or both (IPCC 2007, p. 78). Various types of changes in climate can have direct or indirect effects on species. These effects may be positive, neutral, or negative and they may change over time, depending on the species and other relevant considerations, such as the effects of interactions of climate with other variables (e.g., habitat fragmentation) (IPCC 2007, pp. 8–14, 18–19). In our analyses, we use our expert judgment to weigh relevant information, including uncertainty, in our consideration of various aspects of climate change.

Projected changes in climate and related effects can vary substantially across and within different regions of the world (e.g., IPCC 2007a, pp. 8–12). Thus, although global climate projections are informative and in some cases are the only or the best scientific information available, to the extent possible we use ''downscaled'' climate projections which provide higher resolution information that is more relevant to the spatial scales used to assess effects to a given species (see Glick *et al.* 2011, pp. 58–61 for a discussion of downscaling). With regard to our analysis for the Neosho mucket and the rabbitsfoot, downscaled projections of climate change are available, but projecting precise effects on these two species from downscaled models is difficult because of the large geographic areas inhabited by both species. However, projections for the change in annual air temperature by the year 2080 for the Neosho mucket ranges between an increase of 7 to 8 degrees Fahrenheit (°F) and for the rabbitsfoot, an increase of 4.5 to 8 °F in annual air temperature (Maura *et al.* 2007, as displayed on *http://www.climatewizard.org/# 2012*).

Mussels can be placed into thermal guilds, thermally sensitive and thermally tolerant species, according to their response to warm summer water temperatures greater than 35 °C (95 °F) (Spooner and Vaughn 2008, p. 313). Although we do not have physiological data on rabbitsfoot and Neosho mucket, closely related species, *Lampsilis cardium* and *Quadrula pustulosa,* are thermally sensitive (Spooner and Vaughn 2008, p. 313). Data for the Kiamichi River in Oklahoma suggests that, over the past 17 years as water and air temperatures have increased, mussel beds once dominated by thermally sensitive species are now dominated by thermally tolerant species (Galbraith *et al.* 2010, p. 1179; Spooner and Vaughn 2008, p. 316). As temperature increases due to climate change throughout the range of Neosho mucket and rabbitsfoot, both species may experience population declines as warmer rivers are more suitable for thermally tolerant species.

Ficke *et al.* (2005, pp. 67–69; 2007, pp. 603–605) described the general potential effects of climate change on freshwater fish populations worldwide. Overall, the distribution of fish species is expected to change, including range shifts and local extirpations. Because freshwater mussels are entirely dependent upon a fish host for successful reproduction and dispersal, any changes in local fish populations would also affect freshwater mussel populations. Therefore, mussel populations will reflect local extirpations or decreases in abundance of fish species.

Conservation Measures

Nonregulatory conservation measures that address these threats include implementing artificial propagation programs (see Summary of Factor A). The Interior Highlands Mollusk Conservation Council, Ohio River Ecosystem Team—Mollusk Subcommittee and similar working groups targeting mussel conservation efforts, has been created and includes the Service, State and Federal agencies, nongovernmental organizations, academia, and Tribes.

Summary of Factor E

A variety of natural and manmade factors threatens the continued existence of Neosho mucket and rabbitsfoot. Forty-one of the 51 (80 percent) extant rabbitsfoot populations are isolated from viable populations. A lack of recruitment and genetic isolation pose a threat to the continued existence of these species. Invasive, nonindigenous species, such as zebra mussel, black carp, and Asian clam, have potentially adversely affected populations of the Neosho mucket and rabbitsfoot and their fish hosts, and these effects are expected to persist into the future. Evidence exists that the interaction of climate change and water management negatively impacts mussels (Galbraith *et al.* 2010, pp. 1179–1180). Drought combined with water management practices has led to high mortality in thermally sensitive species (Galbraith *et al.* 2010, pp. 1180–1181). Based on the best available information, we are unable to predict the timing and scope of any changes to these mussel species that may occur as a result of climate change effects, particularly when combined with effects from water management practices.

*Cumulative Effects of Threats*

The life-history traits and habitat requirements of the Neosho mucket and rabbitsfoot, and other freshwater mussels in general, make them extremely susceptible to environmental change. Unlike other aquatic organisms (e.g., aquatic insects and fish), mussels have limited refugia from stream disturbances (e.g., droughts, sedimentation, chemical contaminants). Mechanisms leading to the decline of Neosho mucket and rabbitsfoot, as discussed above, range from local (e.g., riparian clearing, chemical contaminants, etc.) to regional influences (e.g., altered flow regimes, channelization, etc.), to global climate change. The synergistic (interaction of two or more components) effects of threats are often complex in aquatic

environments, making it difficult to predict changes in mussel and fish host(s) distribution, abundance, and habitat availability that may result from these effects. While these stressors may act in isolation, it is more probable that many stressors are acting simultaneously (or in combination) (Galbraith *et al.* 2010, p. 1176) on Neosho mucket and rabbitsfoot populations.

*Summary of Threats*

The decline of the Neosho mucket and rabbitsfoot (described by Butler 2005, entire; described by Service 2010, entire) is primarily the result of habitat loss and degradation (Neves 1991, p. 252). Chief among the causes of decline, but in no particular ranking order, are impoundments, sedimentation, channelization, chemical contaminants, oil and natural gas development, and mining (Neves 1991, p. 252; Neves 1993, pp. 4–6; Williams *et al.* 1993, pp. 7–9; Neves *et al.* 1997, pp. 60 and 63–75; Watters 2000, pp. 262–267). These stressors have had profound adverse effects on Neosho mucket and rabbitsfoot populations, their habitats, and fish hosts.

Regulations at the Federal level may not be providing the protection needed for the Neosho mucket and rabbitsfoot. For example, 8 of the 11 (73 percent) viable rabbitsfoot populations are located in waters listed as impaired under section 303(d) of the CWA. In addition, numerous tributaries within watersheds with viable Neosho mucket and rabbitsfoot populations also are listed as impaired waters under section 303(d) of the CWA. The CWA has a stated goal to establish water quality standards that protect aquatic species, including mussel species. However, the CWA has generally been insufficient at protecting mussels, and adequate water quality criteria that are protective of all mussel life stages, particularly glochidia and juveniles, may not be established. Little information is known about specific sensitivities of mussels to various pollutants, but both species continue to decline due to the effects of poor water quality, contaminants, and other factors.

The majority of extant Neosho mucket populations are small and isolated, with only one viable population remaining. The majority of extant rabbitsfoot populations are marginal and small (78 percent) and isolated (80 percent), with only two small (5 percent) and 4 viable populations (36 percent) not isolated from another viable population (Butler 2005, p. 22; Service 2010, pp. 3–8). The patchy distributional pattern of populations in short river reaches makes them more susceptible to extirpation from single catastrophic events, such as toxic chemical spills (Watters and Dunn 1995, p. 257). Furthermore, this level of isolation makes natural recolonization of extirpated populations virtually impossible without human intervention. Various nonnative species of aquatic organisms are firmly established in the range of the Neosho mucket and rabbitsfoot. The nonnative species that poses the most significant threat to the Neosho mucket and rabbitsfoot is the zebra mussel. Although attempts to alleviate some of these threats are ongoing at some locations, no populations appear to be without threats that are negatively impacting the species.

**Determination**

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the Neosho mucket and the rabbitsfoot. Section 3(6) of the Act defines an endangered species as ''any species that is in danger of extinction throughout all or a significant portion of its range'' and defines a threatened species as ''any species that is likely to become endangered throughout all or a significant portion of its range within the foreseeable future.'' As described in detail above, these two species are currently at risk throughout all of their respective ranges due to the immediacy, severity, and scope of threats from habitat destruction and modification (Factor A) and other natural or manmade factors affecting their continued existence (Factor E). Existing regulatory mechanisms applicable to these species, such as the CWA, appear to be inadequate to reduce these threats from water quality degradation, in particular, chemical contaminants (Factor D). Although there are ongoing actions to alleviate some threats, no populations appear to be without current threats. These isolated species have a limited ability to recolonize historically occupied stream and river reaches and are vulnerable to natural or human-caused changes in their stream and river habitats.

Their range curtailment, small population size, and isolation make the Neosho mucket and rabbitsfoot more vulnerable to threats such as sedimentation, disturbance of riparian corridors, changes in channel morphology, point- and nonpoint-source contaminants, urbanization, and invasive species and to stochastic events (such as chemical spills).

*Neosho Mucket*

The Neosho mucket has been extirpated (no longer in existence) from approximately 62 percent of its historical range with only 9 of 16 historical populations remaining (extant). This mussel is declining rangewide (eight of the nine extant populations), with only one remaining large, viable population. Based on the best available scientific and commercial information, we have determined that the Neosho mucket is in danger of extinction throughout all of its range. Therefore, we are listing it as an endangered species. In other words, we find that a threatened species status is not appropriate for the Neosho mucket due to its contracted range and only one remaining stable and viable population.

*Rabbitsfoot*

The rabbitsfoot has been extirpated from approximately 64 percent of its historical range. While this species is declining rangewide, it sustains recruitment and population viability consistently in 11 (8 percent of historical or 22 percent of extant distribution) large, extant river populations and, while reduced in numbers, it also sustains limited recruitment and distribution in another 17 river populations. Of the 17 river populations with limited recruitment and distribution, 15 of these populations (88 percent) are declining.

All remaining rabbitsfoot populations continue to be reduced in size or quality by habitat degradation as a result of impoundments and dams, navigation projects, commercial and residential development, agriculture, chemical contaminants, mining, and oil and natural gas development (Factor A). Climate change could affect in-stream water temperatures, seasonal water flows, and mussel and fish host reproductive activities, including the availability of mussel fish host species (Factor E). Invasive species occupying rabbitsfoot habitat will likely cause additional displacement and recruitment interference (Factor E). Eight of the 11 (73 percent) viable rabbitsfoot populations are in watersheds that have numerous tributaries that are listed as impaired waters under section 303(d) of the CWA. Regulatory mechanisms such as the CWA have been insufficient to significantly reduce or remove these types of threats to rabbitsfoot (Factor D). The synergistic effects of threats such as these are often complex in aquatic environments and make it difficult to predict changes in mussel and fish host(s) distribution, abundance, and

habitat availability. These threats are probably acting simultaneously on the remaining rabbitsfoot populations with negative results and are expected to continue to do so. Thus, while rabbitsfoot sustains 11 viable populations, these populations continue to be at risk, and the remaining extant populations are affected by isolation, fragmentation, limited recruitment and distribution, and population declines, which make the species particularly susceptible to extinction in the near future if threats continue or increase.

While we have determined that the rabbitsfoot is not currently in danger of extinction, because of the threats facing the species and impacts to its life history, we find that the species is likely to become endangered in the foreseeable future throughout all of its range. Therefore, we are listing it as a threatened species. In other words, we find that endangered status is not appropriate for the rabbitsfoot because 8 percent of the historical populations or 22 percent of extant populations remaining in its historical streams can be considered viable, but are facing subtle, pervasive threats that are ubiquitous in each watershed.

*Significant Portion of the Range*

Under the Act and our implementing regulations, a species may warrant listing if it is endangered or threatened throughout all or a significant portion of its range. The Act defines ''endangered species'' as any species which is ''in danger of extinction throughout all or a significant portion of its range,'' and ''threatened species'' as any species which is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The definition of ''species'' is also relevant to this discussion. The Act defines ''species'' as follows: ''The term 'species' includes any subspecies of fish or wildlife or plants, and any distinct population segment (DPS) of any species of vertebrate fish or wildlife which interbreeds when mature.''

Two recent district court decisions have addressed whether the SPR language allows the Service to list or protect less than all members of a defined ''species'': *Defenders of Wildlife* v. *Salazar,* 729 F. Supp. 2d 1207 (D. Mont. 2010), concerning the Service's delisting of the Northern Rocky Mountains gray wolf (74 FR 15123, April 2, 2009); and *WildEarth Guardians* v. *Salazar,* 2010 U.S. Dist. LEXIS 105253 (D. Ariz. September 30, 2010), concerning the Service's 2008 finding on a petition to list the Gunnison's prairie dog (73 FR 6660, February 5, 2008). The Service had asserted in both of these determinations that it had authority, in effect, to protect only some members of a ''species,'' as defined by the Act (i.e., species, subspecies, or DPS), under the Act. Both courts ruled that the determinations were arbitrary and capricious on the grounds that this approach violated the plain and unambiguous language of the Act. The courts concluded that reading the SPR language to allow protecting only a portion of a species' range is inconsistent with the Act's definition of ''species.'' The courts concluded that once a determination is made that a species (i.e., species, subspecies, or DPS) meets the definition of ''endangered species'' or ''threatened species,'' it must be placed on the list in its entirety and the Act's protections applied consistently to all members of that species (subject to modification of protections through special rules under sections 4(d) and 10(j) of the Act).

We evaluated the current range of the Neosho mucket and rabbitsfoot to determine if there is any apparent geographic concentration of potential threats for either species. The Neosho mucket and rabbitsfoot are highly restricted in their ranges, and the threats occur throughout their ranges. We considered the potential threats due to impoundments, sedimentation, channelization, chemical contaminants, oil and gas development, mining, and climate change. We found no concentration of threats because of the species' limited and curtailed ranges, and uniformity of the threats throughout their entire range. Having determined that the Neosho mucket is endangered throughout its entire range, it is not necessary to evaluate whether there are any significant portions of its range. Having determined that the rabbitsfoot is threatened throughout its entire range, we must next consider whether there are any significant portions of the range where the rabbitsfoot is in danger of extinction or is likely to become endangered in the foreseeable future.

We found no portion of the rabbitsfoot's range where potential threats are significantly concentrated or substantially greater than in other portions of its range. Therefore, we find that factors affecting the species are essentially uniform throughout its range, indicating no portion of the range of the species warrants further consideration of possible endangered or threatened status under the Act. Therefore, we find there is no significant portion of the rabbitsfoot range that may warrant a different status.

**Critical Habitat**

In the October 16, 2012, proposed rule to list the species (77 FR 63440), we also determined that designation of critical habitat was prudent, and critical habitat was determinable, for both the Neosho mucket and rabbitfoot, and we proposed critical habitat for both species. We will issue a final determination on critical habitat for Neosho mucket and rabbitsfoot under the Act in the near future.

**Available Conservation Measures**

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation by Federal, State, Tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act requires the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed and preparation of a draft and final recovery plan. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan identifies site-specific management actions that set a trigger for review of the five factors that control whether a species remains endangered

or may be downlisted or delisted, and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (comprising species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on our Web site (*http://www.fws.gov/endangered*), or from our Arkansas Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (e.g., restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

Once these species are listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost-share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the States of Alabama, Arkansas, Indiana, Illinois, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Ohio, Oklahoma, Pennsylvania, Tennessee, and West Virginia would be eligible for Federal funds to implement management actions that promote the protection or recovery of the Neosho mucket and rabbitsfoot. Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants.*

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal agency actions within these species' habitat that may require conference or consultation or both as described in the preceding paragraph include, but are not limited to, the funding of, carrying out, or the issuance of permits for reservoir construction, navigation, natural gas extraction, stream alterations, discharges, wastewater facility development, water withdrawal projects, pesticide registration, mining, and road and bridge construction. This may include, but is not limited to, management and any other landscape-altering activities on Federal lands administered by the Department of Defense, and U.S. Department of Agriculture Forest Service; issuance of CWA permits by the Army Corps of Engineers and EPA; construction and maintenance of interstate power and natural gas transmission line right-of-ways by the Federal Energy Regulatory Commission; and construction and maintenance of roads or highways by the FHWA.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered and threatened wildlife. The prohibitions of section 9(a)(1) of the Act, codified at 50 CFR 17.21 and 17.31 for endangered and threatened wildlife make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import, export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. Under the Lacey Act (18 U.S.C. 42–43; 16 U.S.C. 3371–3378), it is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 for endangered species, and at 17.32 for threatened species. With regard to endangered wildlife, a permit must be issued for the following purposes: For scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities.

Our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), is to identify, to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a proposed listing on planned and ongoing activities within the range of species proposed for listing. The following activities could potentially result in a violation of section 9 of the Act for the Neosho mucket and rabbitsfoot; this list is not comprehensive:

(1) Collecting, handling, possessing, selling, delivering, carrying, or transporting of the species, including import or export across State lines and international boundaries that are unauthorized, except for properly documented antique specimens of these taxa at least 100 years old, as defined by section 10(h)(1) of the Act;

(2) Introduction of nonnative species that compete with or prey upon the Neosho mucket and rabbitsfoot, such as the introduction of a predator of mussels like the nonnative black carp, to any water body where these species occur;

(3) The release of biological control agents that attack any life stage of Neosho mucket and rabbitsfoot that is unauthorized;

(4) Modification of the channel or water flow of any stream in which the Neosho mucket and rabbitsfoot are known to occur that is unauthorized or not covered under the Act for impacts to these species; and

(5) Discharge of chemicals or fill material into any waters supporting the Neosho mucket and rabbitsfoot that are unauthorized or not covered under the Act for impacts to these species.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Service's Ecological Services Field Office in the State where the proposed activities will occur. Requests for copies of the regulations concerning listed animals and general inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 1875 Century Boulevard, Suite

200, Atlanta, GA 30345; telephone: 404–679–7140; facsimile: 404–679–7081.

Under section 4(d) of the Act, the Secretary has discretion to issue such regulations as she deems necessary and advisable to provide for the conservation of threatened species. Our implementing regulations (50 CFR 17.31) for threatened wildlife generally incorporate the prohibitions of section 9 of the Act for endangered wildlife, except when a ''special rule'' promulgated pursuant to section 4(d) of the Act has been issued with respect to a particular threatened species. In such a case, the general prohibitions in 50 CFR 17.31 would not apply to that species, and instead, the special rule would define the specific take prohibitions and exceptions that would apply for that particular threatened species, which we consider necessary and advisable to conserve the species. The Secretary also has the discretion to prohibit by regulation with respect to a threatened species any act prohibited by section 9(a)(1) of the Act. We are not proposing to promulgate a special section 4(d) rule, and as a result, all of the section 9 prohibitions, including the ''take'' prohibitions, will apply to the rabbitsfoot.

## Required Determinations

*National Environmental Policy Act (42 U.S.C. 4321 et seq.)*

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act (NEPA), need not be prepared in connection with listing a species as an endangered or threatened species under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

*Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes. We determined that tribal lands or their interests will not be affected by the listing of the Neosho mucket and rabbitsfoot.

## References Cited

A complete list of all references cited in this rule is available on the Internet at *http://www.regulations.gov* and upon request from the Field Supervisor, Arkansas Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

## Authors

The primary authors of this document are the staff members of the Arkansas Ecological Service Field Office (see **FOR FURTHER INFORMATION CONTACT**).

## List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

## Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

## PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 1531–1544; 4201–4245; unless otherwise noted.

■ 2. Amend § 17.11(h) by adding new entries for ''Mucket, Neosho'' and ''Rabbitsfoot'' to the List of Endangered and Threatened Wildlife in alphabetical order under Clams to read as set forth below:

**§ 17.11 Endangered and threatened wildlife.**

* * * * *

(h) * * *

| Species | | Historic range | Vertebrate population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Common name | Scientific name | | | | | | |
| * | * | * | * | * | * | | * |
| CLAMS | | | | | | | |
| * | * | * | * | * | * | | * |
| Mucket, Neosho | *Lampsilis rafinesqueana.* | U.S.A. (AR, KS, MO, OK). | Entire | E | 816 | NA | NA |
| * | * | * | * | * | * | | * |
| Rabbitsfoot | *Quadrula cylindrica cylindrica.* | U.S.A. (AL, AR, GA, IN, IL, KS, KY, LA, MO, MS, OH, OK, PA, TN, WV). | Entire | T | 816 | NA | NA |
| * | * | * | * | * | * | | * |

Dated: August 26, 2013.

**Rowan W. Gould,**

*Acting Director, U.S. Fish and Wildlife Service.*

[FR Doc. 2013–22245 Filed 9–16–13; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 679

**[Docket No. 120918468–3111–02]**

**RIN 0648–XC873**

### Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 620 in the Gulf of Alaska

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for pollock in Statistical Area 620 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the C season allowance of the 2013 total allowable catch of pollock for Statistical Area 620 in the GOA.

**DATES:** Effective 1200 hours, Alaska local time (A.l.t.), September 13, 2013, through 1200 hours, A.l.t., October 1, 2013.

**FOR FURTHER INFORMATION CONTACT:** Josh Keaton, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The C season allowance of the 2013 total allowable catch (TAC) of pollock in Statistical Area 620 of the GOA is 7,600 metric tons (mt) as established by the final 2013 and 2014 harvest specifications for groundfish of the GOA (78 FR 13162, February 26, 2013). In accordance with § 679.20(a)(5)(iv)(B), the Administrator, Alaska Region, NMFS (Regional Administrator), hereby increases the C season pollock allowance by 166 mt to reflect the total underharvest of the B season allowance in Statistical Area 620. Therefore, the revised C season allowance of the pollock TAC in Statistical Area 620 is 7,766 mt (7,600 mt plus 166 mt).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the C season allowance of the 2013 TAC of pollock in Statistical Area 620 of the GOA has been reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 7,566 mt and is setting aside the remaining 200 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 620 of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

### Classification

This action responds to the best available information recently obtained from the fishery. The Acting Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) and as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for pollock in Statistical Area 620 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of September 10, 2013.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: September 11, 2013.

**James P. Burgess,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2013–22588 Filed 9–12–13; 4:15 pm]

BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 679

**[Docket No. 121018563–3418–02]**

**RIN 0648–XC872**

### Fisheries of the Exclusive Economic Zone Off Alaska; Sharks in the Bering Sea and Aleutian Islands Management Area

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting retention of sharks in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary because the 2013 total allowable catch (TAC) of sharks in the BSAI has been reached.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), September 12, 2013, through 2400 hrs, A.l.t., December 31, 2013.

**FOR FURTHER INFORMATION CONTACT:** Josh Keaton, 907–586–7269.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2013 TAC sharks in the BSAI is 100 metric tons (mt) as established by the final 2013 and 2014 final harvest specifications for groundfish of the GOA (78 FR 13813, March 1, 2013).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2013 TAC of sharks in the BSAI has been reached. Therefore, NMFS is requiring that sharks caught in the BSAI be treated as prohibited species in accordance with § 679.21(b).

### Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment

pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay prohibiting the retention of sharks in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of September 10, 2013.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by §§ 679.20 and 679.21 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: September 11, 2013.

**James P. Burgess,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2013–22585 Filed 9–12–13; 4:15 pm]

**BILLING CODE 3510–22–P**

# Proposed Rules

Federal Register
Vol. 78, No. 180
Tuesday, September 17, 2013

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 915

**[Doc. No. AMS–FV–13–0054; FV13–915–2 PR]**

## Avocados Grown in South Florida; Increased Assessment Rate

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would increase the assessment rate established for the Avocado Administrative Committee (Committee) for the 2013–14 and subsequent fiscal periods from $0.25 to $0.30 per 55-pound bushel container of Florida avocados handled. The Committee locally administers the marketing order, which regulates the handling of avocados grown in South Florida. Assessments upon Florida avocado handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period begins April 1 and ends March 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Comments must be received by October 2, 2013.

**ADDRESSES:** Interested persons are invited to submit written comments on this proposed rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *http://www.regulations.gov*. Comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov*. All comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

**FOR FURTHER INFORMATION CONTACT:** Doris Jamieson, Marketing Specialist, or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (863) 324–3375, Fax: (863) 325–8793, or Email: *Doris.Jamieson@ams.usda.gov or Christian.Nissen@ams.usda.gov*.

Small businesses may request information on complying with this regulation by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Jeffrey.Smutny@ams.usda.gov.*

**SUPPLEMENTARY INFORMATION:** This proposed rule is issued under Marketing Order No. 915, as amended (7 CFR part 915), regulating the handling of avocados grown in South Florida, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this proposed rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Florida avocado handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable Florida avocados beginning on April 1, 2013, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposed rule would increase the assessment rate established for the Committee for the 2013–14 and subsequent fiscal periods from $0.25 to $0.30 per 55-pound bushel container of avocados.

The Florida avocado marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Florida avocados. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are therefore in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2012–13 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on June 12, 2013, and unanimously recommended 2013–14 expenditures of $472,553 and an assessment rate of $0.30 per 55-pound container of avocados. In comparison, last year's budgeted expenditures were $324,575. The assessment rate of $0.30 is $0.05 higher than the rate currently in effect. The Committee recommended increasing the assessment rate to provide additional funds for research to address the Laurel Wilt fungus, which can infect and kill avocado trees.

The major expenditures recommended by the Committee for the

2013–14 year include $175,000 for research, $119,483 for salaries, and $51,500 for employee benefits. Budgeted expenses for these items in 2012–13 were $75,000, $101,705, and $48,000, respectively.

The assessment rate recommended by the Committee was derived by reviewing anticipated expenses, expected shipments of Florida avocados, and available reserves. Florida avocado shipments for the year are estimated at 1,000,000 55-pound bushel containers, which should provide $300,000 in assessment income. Income derived from handler assessments, interest income, and funds from the Committee's authorized reserve would be adequate to cover budgeted expenses. Funds in the reserve (currently $465,000) would be kept within the maximum permitted by the order (approximately three fiscal periods' expenses, § 915.42).

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations to modify the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed, and further rulemaking would be undertaken as necessary. The Committee's 2013–14 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

**Initial Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 30 handlers of Florida avocados subject to regulation under the order and approximately 300 producers of avocados in the production area. Small agricultural service firms, which include avocado handlers, are defined by the Small Business Administration (SBA) as those having annual receipts less than $7,000,000, and small agricultural producers are defined as those having annual receipts less than $750,000 (13 CFR 121.201).

According to Committee data and information from the National Agricultural Statistical Service, the average price for Florida avocados during the 2011–12 season was approximately $20.79 per 55-pound bushel container and total shipments were slightly higher than 1.2 million 55-pound bushels. Using the average price and shipment information, the majority of avocado handlers could be considered small businesses under SBA's definition. In addition, based on avocado production, producer prices, and the total number of Florida avocado producers, the average annual producer revenue is less than $750,000. Consequently, the majority of avocado handlers and producers may be classified as small entities.

This proposal would increase the assessment rate for the 2013–14 and subsequent fiscal periods from the current rate of $0.25 to $0.30 per 55-pound bushel container of avocados. The Committee unanimously recommended the increased assessment rate, and 2013–14 expenditures of $472,553. The increase was recommended to provide an additional $100,000 for research to address the Laurel Wilt fungus, which can infect and kill avocado trees. As previously stated, income from handler assessments, interest income, and funds from reserves, would be adequate to meet this year's expenses.

Alternative expenditure and assessments levels were discussed prior to arriving at this budget. However, the Committee agreed on $472,553 in expenditures, reviewed the quantity of assessable avocados and available reserves, and recommended an assessment rate of $0.30 per 55-pound bushel container.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the Florida avocado industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the June 12, 2013, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0189 Generic OMB Fruit Crops. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large Florida avocado handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide more opportunities for citizens to access Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this action.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *www.ams.usda.gov/MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Jeffrey Smutny at the previously-mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 15-day comment period is provided to allow interested persons to respond to this proposed rule. Fifteen days is deemed appropriate because: (1) The 2013–14 fiscal period began on April 1, 2013, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable Florida avocados handled during such

fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

**List of Subjects in 7 CFR Part 915**

Avocados, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 915 is proposed to be amended as follows:

## PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

■ 1. The authority citation for 7 CFR part 915 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. Section 915.235 is revised to read as follows:

**§ 915.235 Assessment rate.**

On and after April 1, 2013, an assessment rate of $0.30 per 55-pound container or equivalent is established for avocados grown in South Florida.

Dated: September 11, 2013.

**Rex A. Barnes,**

*Associate Administrator, Agricultural Marketing Service.*

[FR Doc. 2013–22539 Filed 9–16–13; 8:45 am]

**BILLING CODE 3410–02–P**

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 984

**[Doc. No. AMS–FV–13–0056; FV13–984–1 PR]**

### Walnuts Grown in California; Increased Assessment Rate

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would increase the assessment rate established for the California Walnut Board (Board) for the 2013–14 and subsequent marketing years from $0.0175 to $0.0189 per kernelweight pound of merchantable walnuts. The Board locally administers the marketing order which regulates the handling of walnuts grown in California. Assessments upon walnut handlers are used by the Board to fund reasonable and necessary expenses of the program. The marketing year begins September 1 and ends August 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Comments must be received by October 17, 2013.

**ADDRESSES:** Interested persons are invited to submit written comments on this proposed rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *http://www.regulations.gov*. Comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov*. All comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting comments will be made public on the Internet at the address provided above.

**FOR FURTHER INFORMATION CONTACT:** Andrea Ricci, Marketing Specialist, or Martin Engeler, Regional Director, California Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906, or Email: *Andrea.Ricci@ams.usda.gov* or *Martin.Engeler@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Jeffrey.Smutny@ams.usda.gov.*

**SUPPLEMENTARY INFORMATION:** This proposed rule is issued under Marketing Order No. 984, as amended (7 CFR part 984), regulating the handling of walnuts grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this proposed rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California walnut handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable walnuts beginning on September 1, 2013, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposed rule would increase the assessment rate established for the Board for the 2013–14 and subsequent marketing years from $0.0175 to $0.0189 per kernelweight pound of merchantable walnuts.

The California walnut marketing order provides authority for the Board, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board are growers and handlers of California walnuts. They are familiar with the Board's needs and with the costs of goods and services in their local area and are therefore in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2011–12 and subsequent marketing years, the Board recommended, and USDA approved, an assessment rate of $0.0175 per kernelweight pound of merchantable walnuts that would continue in effect from year to year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Board or other information available to USDA.

The Board met on June 6, 2013, and unanimously recommended 2013–14 expenditures of $10,166,860 and an assessment rate of $0.0189 per

kernelweight pound of merchantable walnuts. In comparison, last year's budgeted expenditures were $8,840,000. The assessment rate of $0.0189 is $0.0014 per pound higher than the rate currently in effect. The quantity of assessable walnuts for the 2013–14 marketing year is estimated at 486,000 tons (inshell), which is 6,000 tons higher than last year's. At the recommended higher assessment rate of $0.0189 per kernelweight pound, the Board should collect approximately $8,266,860 in assessment income. Assessment income plus funds from the Board's authorized prior year's carry-in financial reserve and Foreign Agricultural Service (FAS) funding would be adequate to cover its 2013–14 anticipated expenditures of $10,166,860.

The major expenditures recommended by the Board for the 2013–14 marketing year includes $830,000 for employee expenses, $146,500 for office expenses, $225,000 for operating expenses, and $8,965,360 for program expenses which include domestic market development, production research, post-harvest research, and industry communications. In comparison, budgeted expenses for these items for the 2012–13 marketing year were $797,000, $119,000, $219,000, and $7,705,000, respectively.

The assessment rate recommended by the Board was derived by evaluating expected shipments of California walnuts certified as merchantable, budgeted expenses, the level of available prior year's carry-in financial reserve, and the desired 2013–14 ending financial reserve. The Board met on June 6, 2013, and unanimously approved using a three prior years' average to formulate the 2013–14 estimate of 486,000 tons (inshell) for merchantable shipments. Pursuant to § 984.51(b) of the order, this figure is converted to a merchantable kernelweight basis using a factor of 0.45 (486,000 tons × 2,000 pounds per ton × 0.45), which yields 437,400,000 kernelweight pounds. The Board determined that it could utilize $1.9 million from its carry-in financial reserve and still maintain an adequate 2013–2014 ending financial reserve. The remaining $8,266,860 needed to meet budgeted expenses would need to be raised through assessments. Dividing the $8,266,860 in necessary assessment revenue by 2013 estimated merchantable shipments of 437,400,000 kernelweight pounds, results in an assessment rate of $0.0189. Income derived from handler assessments, combined with funds from the Board's authorized prior year's carry-in financial reserve, plus FAS funding for the last year of a three year project would adequately cover budgeted expenses.

Reserve funds by the end of the 2013–14 marketing year are projected to be $6,234,895, which is well within the maximum permitted by the order of approximately two marketing years' expenses. Section 984.69 of the order authorizes the Board to maintain a financial reserve of not more than two years' budgeted expenses. Excess assessment funds may be retained in the reserve or may be used temporarily to defray expenses of the subsequent marketing year, but if so used, must be made available to the handlers from whom they were collected within five months after the end of the marketing year.

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Board or other available information.

Although this assessment rate is effective for an indefinite period, the Board will continue to meet prior to or during each marketing year to recommend a budget of expenses and consider recommendations to modify the assessment rate. The dates and times of Board meetings are available from the Board or USDA. Board meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate Board recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Board's 2013–14 budget and those for subsequent marketing years would be reviewed and, as appropriate, approved by USDA.

**Initial Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 4,100 growers of California walnuts in the production area and approximately 90 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $7,000,000. (13 CFR 121.201)

Current census data from the USDA's National Agricultural Statistics Service (NASS), indicates that approximately 90 percent of California's walnut farms are smaller than 100 acres.

NASS reports that the average yield for the 2011–12 crop was 1.88 tons per acre and the average price received for the 2011–12 crop was $2,900 per ton.

A 100-acre farm with an average yield of 1.88 tons per acre would therefore have been expected to produce about 188 tons of walnuts during the 2011–12 season. At $2,900 per ton, that farm's production would have had an approximate value of $545,200. Assuming that the majority of California's walnut farms are smaller than 100 acres, it could be concluded that the majority of the growers had receipts of less than $545,200 in 2011–12, which is well below the SBA threshold of $750,000. Thus, the majority of California's walnut growers would be classified as small growers according to SBA's definition.

According to information supplied by the industry, approximately 40 percent of California's walnut handlers shipped merchantable walnuts valued under $7,000,000 during the 2011–12 marketing year and would therefore be considered small handlers according to the SBA definition.

This proposed rule would increase the assessment rate established for the Board and collected from handlers for the 2013–14 and subsequent marketing years from $0.0175 to $0.0189 per kernelweight pound of merchantable walnuts. The Board unanimously recommended 2013–14 expenditures of $10,166,860 and an assessment rate of $0.0189 per kernelweight pound of merchantable walnuts. The proposed assessment rate of $0.0189 is $0.0014 higher than the 2012–13 rate. The quantity of merchantable walnuts for the 2013–14 marketing year is estimated at 486,000 tons inshell weight, or 437,400,000 pounds kernelweight. Thus, the $0.0189 rate should provide $8,266,860 in assessment income. Assessment income, along with funds from the Board's authorized prior year's carry-in financial reserve, plus FAS funding for the last year of a three year

project would adequately cover its 2013–14 anticipated expenditures of $10,166,860.

The major expenditures recommended by the Board for the 2013–14 marketing year includes $830,000 for employee expenses, $146,500 for office expenses, $225,000 for operating expenses, and $8,965,360 for program expenses which include domestic market development, production research, post-harvest research, and industry communications. In comparison, budgeted expenses for these items for the 2012–13 marketing year were $797,000, $119,000, $219,000, and $7,705,000, respectively.

The Board reviewed and unanimously recommended 2013–14 expenditures of $10,166,860. Prior to arriving at this budget, the Board considered alternative expenditure levels but ultimately decided that the recommended levels were reasonable to properly administer the order. The assessment rate recommended by the Board was derived by evaluating expected shipments of California walnuts certified as merchantable, budgeted expenses, the level of available prior year's carry-in financial reserve, and the desired 2013–14 ending financial reserve. The Board met on June 6, 2013, and unanimously approved using a three prior years' average to formulate the 2013–14 estimate of 486,000 tons (inshell) for merchantable shipments. Pursuant to § 984.51(b) of the order, this figure is converted to a merchantable kernelweight basis using a factor of 0.45 (486,000 tons × 2,000 pounds per ton × 0.45), which yields 437,400,000 kernelweight pounds. The Board determined that it could utilize $1.9 million from its carry-in financial reserve and still maintain an adequate 2013–2014 ending financial reserve. The remaining $8,266,860 necessary to meet budgeted expenses would need to be raised through assessments. Thus, dividing the $8,266,860 in necessary assessment revenue by 2013 estimated shipments of 437,400,000 kernelweight pounds results in an assessment rate of $0.0189.

Based on the crop estimate of 486,000 tons inshell weight, or 437,400,000 pounds kernelweight, the Board determined that the revenue generated from an assessment rate of $0.0189 per kernelweight pounds of merchantable walnuts, combined with funds from the prior years' carry-in financial reserve, plus FAS funding for the last year of a three year project would adequately cover budgeted expenses while providing an adequate 2013–14 ending financial reserve.

According to NASS, the season average grower prices for the years 2010 and 2011 were $2,040 and $2,900 per ton, respectively. These prices provide a range within which the 2013–14 season average prices could fall. Dividing these average grower prices by 2,000 pounds per ton provides an inshell price per pound range of $1.02 to $1.45. Dividing these inshell prices per pound by the 0.45 conversion factor (inshell to kernelweight) established in the order, yields a 2013–14 price range estimate of $2.27 to $3.22 per kernelweight pound of merchantable walnuts.

Utilizing these estimates and the assessment rate of $0.0189 per kernelweight pound, estimated assessment revenue as a percentage of total estimated grower revenue should likely range between 0.59 and 0.83 percent for the 2013–14 marketing year (assessment rate divided by price per kernelweight pound). Thus, the assessment revenue should be well below one percent of estimated grower revenue for the 2013–14 marketing year.

This proposal would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to growers. However, these costs would be offset by the benefits derived from the operation of the marketing order. In addition, the Board's meeting was widely publicized throughout the California walnut industry. All interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the June 6, 2013, meeting was a public meeting. All entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0178 (Walnuts Grown in California). No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large California walnut handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide more opportunities for citizens to access Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this action.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *www.ams.usda.gov/MarketingOrderSmallBusinessGuide.* Any questions about the compliance guide should be sent to Jeffery Smutny at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The 2013–14 marketing year begins on September 1, 2013, and the marketing order requires that the rate of assessment for each marketing year apply to all merchantable walnuts handled during the year; (2) the Board needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis; and (3) handlers are aware of this action, which was unanimously recommended by the Board at a public meeting and is similar to other assessment rate actions issued in past years.

**List of Subjects in 7 CFR Part 984**

Marketing agreements, Nuts, Reporting and recordkeeping requirements, Walnuts.

For the reasons set forth in the preamble, 7 CFR part 984 is proposed to be amended as follows:

## PART 984—WALNUTS GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 984 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. Section 984.347 is revised to read as follows:

### § 984.347 Assessment rate.

On and after September 1, 2013, an assessment rate of $0.0189 per kernelweight pound is established for California merchantable walnuts.

Dated: September 11, 2013.

**Rex A. Barnes,**

*Associate Administrator, Agricultural Marketing Service.*

[FR Doc. 2013–22571 Filed 9–16–13; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2013–0812; Directorate Identifier 2013–CE–023–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Diamond Aircraft Industries Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for Diamond Aircraft Industries Model DA 40 and DA 40 F Airplanes. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as fatigue strength found in the aft main spar does not ensure unlimited lifetime structural integrity. We are issuing this proposed AD to require actions to address the unsafe condition on these products.

**DATES:** We must receive comments on this proposed AD by November 1, 2013.

**ADDRESSES:** You may send comments 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:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Diamond Aircraft Industries GmbH, N.A. Otto-Str.5, A–2700 Wiener Neustadt, Austria; telephone: +43 2622 26700; fax: +43 2622 26780; email: *office@diamond-air.at;* Internet: *http://www.diamondaircraft.com/contact/technical.php.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

### 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 (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; fax: (816) 329–4090; email: *mike.kiesov@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### 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–2013–0812; Directorate Identifier 2013–CE–023–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://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

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD No.: 2013–0145, dated July 15, 2013 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Structural fatigue testing of the DA 40 aeroplane carried out for an extension of the Major Structural Inspection (MSI) interval has shown that the fatigue strength of the aft main spar in the cabin area does not ensure unlimited lifetime.
>
> This condition, if not corrected, could adversely affect the structural integrity of the aeroplane.
>
> Diamond Aircraft Industries (DAI) issued Mandatory Service Bulletin (MSB) 40–074/MSB D4–094/MSB F4–028, including Work Instruction (WI) WI–MSB 40–074/WI–MSB D4–094/WI–MSB F4–028 (published as a single document), providing instructions to reinforce the aft main spar in the cabin area.
>
> For the reasons described above, this AD requires modification of the aft main spar in the cabin area.
>
> **Note:** Aeroplanes with modified aft main spar are eligible for an increased MSI threshold of 6000 flight hours (FH) since first flight of the aeroplane and increased MSI intervals not to exceed 4000 FH thereafter.

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

### Relevant Service Information

Diamond Aircraft Industries GmbH has issued Mandatory Service Bulletin MSB 40–074, MSB D4–094, and MSB F4–028 (co-published as a single document), dated May 10, 2013; and Diamond Aircraft Industries GmbH Work Instructions WI–MSB 40–074, WI–MSB D4–094, and WI–MSB F4–028, (co-published as a single document), dated May 10, 2013. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

### FAA's Determination and Requirements of the Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have 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 and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

### Costs of Compliance

We estimate that this proposed AD will affect 747 products of U.S. registry. We also estimate that it would take about 6 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $100 per product.

Based on these figures, we estimate the cost of the proposed AD on U.S.

operators to be $455,670, or $610 per product.

**Authority for This Rulemaking**

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

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This proposed 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 AD:

**Diamond Aircraft Industries:** Docket No. FAA–2013–0812; Directorate Identifier 2013–CE–023–AD.

**(a) Comments Due Date**

We must receive comments by November 1, 2013.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to Diamond Aircraft Industries Model DA 40 airplanes, serial numbers 40.006 through 40.009, 40.011 through 40.1071, and 40.1073 through 40.1077; and Model DA 40 F airplanes, serial numbers 40.FC001 through 40.FC029; certificated in any category.

**(d) Subject**

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

**(e) Reason**

This AD was prompted from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as fatigue strength found in the aft main spar does not ensure unlimited lifetime structural integrity. We are issuing this proposed AD to modify the aft main spar in the cabin area to ensure the structural integrity of the airplane.

**(f) Actions and Compliance**

Unless already done, at or before the next Major Structural Inspection (MSI) after the effective date of this AD or within the next 114 months after the effective date of this AD, whichever occurs first, modify the aft main spar in the cabin area following the INSTRUCTIONS section of Diamond Aircraft Industries GmbH Work Instructions WI–MSB 40–074, WI–MSB D4–094, and WI–MSB F4–028 (co-published as a single document), dated May 10, 2013, as specified in Diamond Aircraft Industries GmbH Mandatory Service Bulletins (MSB) 40–074, D4–094, and F4–028 (co-published as a single document), dated May 10, 2013.

**(g) Other FAA AD Provisions**

The following provisions also apply to this AD:

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

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

**(h) Related Information**

Refer to MCAI European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, EASA AD No.: 2013–0145, dated July 15, 2013, for more information. You may examine the AD on the Internet at *http://www.regulations.gov* by searching and locating it in Docket No. FAA–2013–0812. For service information related to this AD, contact Diamond Aircraft Industries GmbH, N.A. Otto-Str.5, A–2700 Wiener Neustadt, Austria; telephone: +43 2622 26700; fax: +43 2622 26780; email: *office@diamond-air.at*; Internet: *http://www.diamondaircraft.com/contact/technical.php.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued in Kansas City, Missouri, on September 11, 2013.

**Earl Lawrence,**

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

[FR Doc. 2013–22570 Filed 9–16–13; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 73

**[Docket No. FDA–2013–C–1008]**

### Wm. Wrigley Jr. Company; Filing of Color Additive Petition

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

**ACTION:** Notice of petition.

**SUMMARY:** The Food and Drug Administration (FDA or we) is announcing that we have filed a petition, submitted by the Wm. Wrigley Jr. Company, proposing that the color additive regulations be amended to expand the use of synthetic iron oxide to include soft and hard candy, mints, and chewing gum. The petition also proposes to lower the specification limit

for lead in synthetic iron oxide for human food use.

**DATES:** The color additive petition was filed on July 16, 2013.

**FOR FURTHER INFORMATION CONTACT:** Laura A. Dye, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 240–402–1275.

**SUPPLEMENTARY INFORMATION:** Under section 721(d)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379e(d)(1)), notice is given that we have filed a color additive petition (CAP 3C0298) submitted by the Wm. Wrigley Jr. Company, c/o Exponent Inc., 1150 Connecticut Ave. NW., Suite 1100, Washington, DC 20036. The petition proposes to amend the color additive regulations in § 73.200 *Synthetic iron oxide* (21 CFR 73.200) to expand the use of synthetic iron oxide to include soft and hard candy, mints, and chewing gum. The petition also proposes to lower the specification limit for lead in synthetic iron oxide for human food use from 10 milligrams per kilogram (mg/kg; 10 parts per million (ppm)) to 5 mg/kg (5 ppm).

We have determined under 21 CFR 25.32(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.

Dated: September 11, 2013.

**Dennis M. Keefe,**

*Director, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition.*

[FR Doc. 2013–22522 Filed 9–16–13; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

**[Docket No. 120723270–3765–01]**

**RIN 0648–BC39**

## Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish of the Gulf of Alaska; Amendment 95 to the Fishery Management Plan for Groundfish

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations to implement Amendment 95 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). This proposed action would modify halibut prohibited species catch (PSC) management in the Gulf of Alaska (GOA) to establish halibut PSC limits for the GOA in Federal regulation; reduce the GOA halibut PSC limits for trawl and hook-and-line gear; proportionately reduce a subset of trawl halibut PSC limits (also called ''sideboards'') for American Fisheries Act, Amendment 80, and Central GOA Rockfish Program vessels; and adjust the accounting methods for halibut PSC sideboard limits for Amendment 80 vessels, as well as halibut PSC used by trawl vessels from May 15 through June 30. This action is necessary to reduce halibut bycatch in the GOA, and is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable law.

**DATES:** Comments must be received no later than October 17, 2013.

**ADDRESSES:** You may submit comments on this document, identified by FDMS Docket Number NOAA–NMFS–2012–0151, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2012-0151,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.
- *Fax:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Fax comments to 907–586–7557.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Electronic copies of Amendment 95 to the FMP, and the Environmental Assessment (EA), the Regulatory Impact Review (RIR), and the Initial Regulatory Flexibility Analysis (IRFA) (collectively, Analysis) prepared for this action are available from *http://www.regulations.gov* or from the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov.*

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS at the above address and by email to *OIRA_Submission@omb.eop.gov* or fax to 202–395–7285.

**FOR FURTHER INFORMATION CONTACT:** Rachel Baker or Obren Davis, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fisheries in the exclusive economic zone of the GOA under the FMP. The North Pacific Fishery Management Council (Council) prepared this FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations implementing the FMP appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

The Council has submitted Amendment 95 for review by the Secretary of Commerce, and a Notice of Availability of this amendment was published in the **Federal Register** on August 29, 2013 (78 FR 53419) with comments invited through October 28, 2013. All relevant written comments received by the end of the applicable comment period, whether specifically directed to the FMP amendment, this proposed rule, or both, will be considered in the approval/disapproval decision for Amendment 95 and addressed in the response to comments in the final decision.

### Background

Pacific halibut (*Hippoglossus stenolepis*) is fully utilized in the directed sport, subsistence, and commercial fisheries off Alaska and is of significant social, cultural, and economic importance to communities throughout the geographical range of the resource. The International Pacific Halibut Commission (IPHC) and NMFS manage fishing for Pacific halibut through regulations established under authority of the Northern Pacific Halibut

Act of 1982 (Halibut Act). The Halibut Act, at section 773c(c), also provides the Council with authority to develop regulations that are in addition to, and not in conflict with, approved IPHC regulations. The Council has exercised this authority in the development of Federal regulations for halibut such as (1) subsistence halibut fishery management measures, codified at § 300.65; (2) the limited access program for charter vessels in the guided sport fishery, codified at § 300.67; and (3) the Individual Fishing Quota (IFQ) Program for the commercial halibut and sablefish fisheries, codified at 50 CFR part 679, under the authority of section 773 of the Halibut Act and section 303(b) of the Magnuson-Stevens Act. NMFS manages halibut PSC in groundfish fisheries under the authority of the Magnuson-Stevens Act. The FMP and implementing regulations currently authorize the Council to recommend, and NMFS to approve, annual halibut PSC limits as a component of the proposed and final groundfish harvest specifications.

Consistent with the Magnuson-Stevens Act's National Standard 1 and National Standard 9, NMFS uses halibut PSC limits to minimize halibut bycatch in the groundfish fisheries to the extent practicable, while achieving, on a continuing basis, the optimum yield from the groundfish fisheries. The use of halibut PSC limits in the groundfish fisheries reduces halibut bycatch and promotes conservation of the halibut resource. This provides the maximum benefit to fishermen and communities that depend on both halibut and groundfish resources, as well as U.S. consumers.

*Current Management of Halibut PSC in the GOA Groundfish Fisheries*

Prohibited species catch in the GOA is catch that may not be retained unless required under section 3.6 of the FMP. A PSC limit is an apportioned, non-retainable amount of fish provided to a groundfish fishery to limit the bycatch of that prohibited species (i.e., halibut) in a fishery. The Magnuson-Stevens Act defines bycatch as ''fish which are harvested in a fishery, but which are not sold or kept for personal use, and includes economic discards and regulatory discards. The term does not include fish released alive under a recreational catch and release fishery management program.'' 16 U.S.C 1802 3(2). NMFS establishes halibut PSC limits to constrain the amount of halibut bycatch in the groundfish fishery. As described in section 3.6 of the FMP, when a halibut PSC limit is reached in an area, further fishing with specific types of gear or modes of operation is prohibited by those who take their halibut PSC limit in that area. In other words, halibut PSC limits impose an upper-limit on bycatch.

Although halibut bycatch is incurred by vessels using trawl, hook-and-line, pot, and jig gear, halibut bycatch primarily occurs in the trawl and hook-and-line groundfish fisheries. Halibut bycatch in the groundfish fisheries may affect commercial, sport, and subsistence halibut fishing opportunities by decreasing the amount of halibut available for those fisheries.

NMFS manages halibut bycatch in the GOA by (1) establishing annual halibut PSC limits, and (2) apportioning those limits to fishery categories and seasons to accommodate halibut PSC needs in specific groundfish fisheries.

*GOA Annual Halibut PSC Limits, Fishery Categories, and Seasonal Apportionments*

The Council recommends groundfish harvest specifications in October each year for the subsequent 2-year period. A 2-year harvest specification cycle allows harvest limits to be specified for a sufficient duration to ensure that catch limits are in place at the start of the second year. This allows fisheries to begin on January 1, pending the final publication of the subsequent set of harvest specifications. The proposed harvest specifications are published in the **Federal Register** for a 30-day comment period and final harvest specifications are published between mid-February and March of each year. The total annual halibut PSC limit in the GOA was set at 2,273 mt in the final 2013 and 2014 harvest specifications for the GOA (78 FR 13162, February 26, 2013). Of this amount, 1,973 mt is apportioned to trawl gear and 300 mt is apportioned to hook-and-line gear.

The FMP authorizes the Council to exempt specific gear types from the halibut PSC limits that are established through the annual harvest specifications process. In past annual consultations with the Council, NMFS has exempted pot gear, jig gear, and the sablefish IFQ hook-and-line gear fishery categories from the non-trawl halibut PSC limit. The rationale for exempting these gear types from halibut PSC limits is contained in the final 2013 and 2014 harvest specifications (78 FR 13162, February 26, 2013). NMFS proposes to continue annual consultations with the Council to determine whether the pot gear, jig gear, and the sablefish IFQ hook-and-line gear fisheries will be exempt from the non-trawl halibut PSC limit. Therefore, this rule does not propose changes to current regulations authorizing NMFS to establish PSC limits for these fisheries through the harvest specifications process.

From 1989 through 2012, the annual harvest specifications process established a 2,000 mt trawl halibut PSC limit. Beginning in 2013, the annual harvest specifications established a 1,973 mt trawl halibut PSC limit. This reduction of 27 mt from the 2,000 mt annual halibut PSC limit was made in conjunction with the implementation of the Central GOA Rockfish Program in 2011 (76 FR 81248, December 27, 2011). Under the Central GOA Rockfish Program, a portion of the trawl halibut PSC limit was specifically reserved and not assigned for use by any person, effectively conserving that halibut biomass for future stock abundance (see Table 28d to part 679). NMFS has accommodated this regulatory provision by decreasing the annual trawl halibut PSC limit as part of the annual harvest specifications (78 FR 13162, February 26, 2013). Additional detail on the Central GOA Rockfish Program is provided in this preamble under the heading ''Allocations of Halibut PSC to the Central GOA Rockfish Program''.

Section 679.21(d)(5) authorizes NMFS to seasonally apportion the annual trawl and hook-and-line halibut PSC limits after consultation with the Council. The FMP and these regulations require that the Council and NMFS consider the following information in seasonally apportioning halibut PSC limits: (1) seasonal distribution of halibut; (2) seasonal distribution of target groundfish species relative to halibut distribution; (3) expected halibut bycatch needs on a seasonal basis relative to changes in halibut biomass and expected catch of target groundfish species; (4) expected bycatch rates on a seasonal basis; (5) expected changes in directed groundfish fishing seasons; (6) expected actual start of fishing effort; and (7) economic effects of establishing seasonal halibut allocations on segments of the target groundfish industry. Under the final 2013 and 2014 harvest specifications for the GOA (78 FR 13162, February 26, 2013), the halibut PSC limits have been seasonally apportioned into five seasons for trawl gear and three seasons for the other hook-and-line fishery. During the annual harvest specifications process the specific amount of halibut PSC limit is assigned to each of these seasons. The halibut PSC limit established for the demersal shelf rockfish (DSR) fishery is not subject to seasonal apportionment.

Section 679.21(d)(3) and (4) establishes the annual halibut PSC limit apportionments to trawl and hook-and-line gear in the GOA through the annual

groundfish harvest specification process. The apportionment of halibut PSC limits by gear, fishery category, and seasons under the annual harvest specifications process provides the opportunity for groundfish harvests in specific fisheries. This apportionment process ensures that halibut PSC limit is available for use in groundfish fisheries earlier in the year (e.g., the trawl deep-water fisheries in the first season), but limits that use so that halibut PSC limit remains to support other groundfish fisheries that occur later in the year (e.g., the trawl shallow-water fisheries in the fourth season). The limits assigned to each season reflect halibut PSC likely to be taken during specific seasons by specific fisheries. For example, a larger seasonal apportionment is provided for the first season trawl shallow-water fisheries than deep-water fisheries to provide halibut PSC limit to support Pacific cod and pollock fisheries that occur at the start of the year. Any underages or overages of a seasonal apportionment of a halibut PSC limit are added to, or deducted from, the next respective seasonal apportionment within the fishing year. Additional detail on the annual apportionment of halibut PSC limit by season and fishery is provided in the final 2013 and 2014 harvest specifications for the GOA (78 FR 13162, February 26, 2013).

Reaching an annual trawl or hook-and-line halibut PSC limit results in closure of groundfish directed fisheries using that gear in the GOA for the remainder of the year, even if some of the groundfish TAC assigned to that gear for that fishery remains unharvested. If a seasonal halibut PSC limit is reached for a fishery category in that season, then groundfish directed fishing is closed for the remainder of that season for that fishery category (e.g., if the second season deep-water fishery halibut PSC limit is reached during the second season, then trawl vessels may not directed fish for species in the deep-water fishery until the third season deep-water fishery halibut PSC limit becomes available). Some target fisheries close before the attainment of the TAC, and other target fisheries do not fully utilize the halibut PSC limits. Since 2000, NMFS has routinely closed directed fisheries for hook-and-line and trawl gear because a seasonal or annual halibut PSC limit was reached.

Regulations at § 679.21(d) further apportion the annual trawl PSC limit to deep-water and shallow-water species fishery categories that are made available seasonally throughout the year. The deep-water species fishery (deep-water fishery) includes sablefish, rockfish, deep-water flatfish, rex sole, and arrowtooth flounder. The shallow-water species fishery (shallow-water fishery) includes pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, skates, and ''other species'' (see § 679.21(d)(3)(iii)). The regulations define halibut PSC apportionment for these two categories because these two groups of fisheries have differing halibut PSC rates. Apportioning specific limits to these fisheries allows NMFS to establish specific limits in one fishery (e.g., the deep-water fishery) that would not result in closures in the other fishery (e.g., the shallow-water fishery) if the halibut PSC limit for one category is reached.

Of the 300 mt of halibut PSC limit currently assigned to hook-and-line gear, this amount is further apportioned between the DSR fishery in the Southeast Outside District, and all other hook-and-line groundfish fisheries in the GOA (i.e., the non-DSR hook-and-line fisheries). Existing regulations at § 679.21(d)(4)(iii) use the term ''other hook-and-line fishery'' to describe the non-DSR hook-and-line fishery, and the term ''other hook-and-line fishery'' will be used in this preamble for consistency. The final 2013 and 2014 annual harvest specifications for the GOA apportion 290 mt of the halibut PSC limit to the other hook-and-line fishery and 10 mt of the halibut PSC limit to the DSR hook-and-line fishery (78 FR 13162, February 26, 2013).

Regulations at § 679.21(d)(4)(iii)(B) further apportion the annual halibut PSC limit for the other hook-and-line fishery between catcher/processors and catcher vessels. The method for apportioning halibut PSC limits between catcher/processors and catcher vessels was established in regulations implementing Amendment 83 to the FMP (76 FR 74670, December 1, 2011). Amendment 83 established gear and sector apportionments for the GOA Pacific cod fisheries. It also implemented formulas to annually divide the other hook-and-line halibut PSC limit between catcher/processors and catcher vessels based on their respective Pacific cod allocations and the annual Pacific cod TACs in the Western GOA and Central GOA. A comprehensive description and example of the calculations necessary to apportion the other hook-and-line halibut PSC limit between catcher/processors and catcher vessels were included in the proposed rule to implement Amendment 83 (76 FR 44700, July 26, 2011) and are not repeated here.

The DSR fishery is defined at § 679.21(d)(4)(iii)(A). The DSR species group is comprised of seven species of nearshore bottom dwelling rockfishes. The DSR fishery has been apportioned 10 mt in recognition of its small-scale of harvests and expected low rates of halibut PSC use. NMFS estimates low halibut PSC bycatch in the DSR fishery because (1) the duration of the DSR fisheries and the gear soak times are short; (2) the DSR fishery occurs in the winter when less overlap occurs in the distribution of DSR and halibut; and (3) the commercial DSR directed fishery has a low total allowable catch (TAC).

Table 1 lists the 2013 and 2014 Pacific halibut PSC limits and apportionments published in the final 2013 and 2014 harvest specifications for the GOA (78 FR 13162, February 26, 2013). Table 2 lists the current seasonal apportionment between the trawl deep-water and shallow-water fisheries. As noted in Table 2, under the current harvest specifications, there is not a specific apportionment of halibut PSC to the fourth season deep-water fishery; instead, vessels are limited to any halibut PSC that may remain after the end of the third season deep-water fishery. The fifth season halibut PSC apportionment to trawl gear is available for use by vessels fishing in either the deep-water or shallow-water fisheries.

TABLE 1—FINAL 2013 AND 2014 PACIFIC HALIBUT PSC LIMITS, ALLOWANCES, AND APPORTIONMENTS

[Values are in metric tons]

| Trawl gear | | | Hook-and-line gear | | | | |
|---|---|---|---|---|---|---|---|
| | | | Other than DSR | | | DSR | |
| Season | Percent | Amount | Season | Percent | Amount | Season | Amount |
| January 20–April 1 | 27.5 | 543 | January 1–June 10 | 86 | 250 | January 1–December 31 | 10 |
| April 1–July 1 | 20 | 395 | June 10–September 1 | 2 | 5 | | |

TABLE 1—FINAL 2013 AND 2014 PACIFIC HALIBUT PSC LIMITS, ALLOWANCES, AND APPORTIONMENTS—Continued

[Values are in metric tons]

| Trawl gear | | | Hook-and-line gear | | | | |
|---|---|---|---|---|---|---|---|
| | | | Other than DSR | | | DSR | |
| Season | Percent | Amount | Season | Percent | Amount | Season | Amount |
| July 1–September 1 | 30 | 592 | September 1–December 31 | 12 | 35 | | |
| September 1–October 1 | 7.5 | 148 | | | | | |
| October 1–December 31 | 15 | 296 | | | | | |
| Total | | 1,973 | | | 290 | | 10 |

TABLE 2—FINAL 2013 AND 2014 APPORTIONMENT OF PACIFIC HALIBUT PSC TRAWL LIMITS BETWEEN THE TRAWL GEAR DEEP-WATER SPECIES FISHERY AND THE SHALLOW-WATER SPECIES FISHERY CATEGORIES

[Values are in metric tons]

| Season | Shallow-water fishery | Deep-water fishery | Total |
|---|---|---|---|
| January 20–April 1 | 444 | 99 | 543 |
| April 1–July 1 | 99 | 296 | 395 |
| July 1–September 1 | 197 | 395 | 592 |
| September 1–October 1 | 148 | Any remainder | 148 |
| Subtotal January 20–October 1 | 888 | 789 | 1,677 |
| October 1–December 31 | | | 296 |
| Total | | | 1,973 |

*Allocations of Halibut PSC Limit to the Central GOA Rockfish Program*

The Central GOA Rockfish Program (76 FR 81248, December 27, 2011) requires NMFS to assign 191.4 mt of the deep-water fishery's halibut PSC limit apportionment to participants in the Central GOA Rockfish Program. This fixed amount is used to support fishing for specific allocations of groundfish species under that program. Of that, 117.3 mt of the annual trawl halibut PSC limit is assigned to the catcher vessel sector, and 74.1 mt is allocated to the catcher/processor sector (see Table 28d to part 679). Under the Central GOA Rockfish Program, 27.4 mt of the halibut PSC limit that could have been assigned to the deep-water fishery was instead reserved and is no longer annually apportioned for use by any fisheries in the GOA. Under the annual harvest specifications process, halibut PSC limit assigned to the Central GOA Rockfish Program has been debited from the third season deep-water trawl PSC limit apportionment because halibut PSC used in the Central GOA rockfish fisheries has historically occurred in the third season.

Regulations implementing the Central GOA Rockfish Program allow NMFS to reapportion some of the halibut PSC limit assigned to that program to the general, non-Rockfish Program GOA trawl fisheries if it has not been used to fish for groundfish species allocated under the Central GOA Rockfish Program (see § 679.21(d)(5)(iii)(B)). In recent years, not all of the halibut PSC limit assigned for exclusive use in the Central GOA Rockfish Program has been used to fully harvest the program's groundfish allocations. Therefore, reapportioning the unused halibut PSC limit from the Central GOA Rockfish Program allows for additional harvest opportunities in other trawl fisheries. No more than 55 percent of the unused annual halibut PSC limit apportioned to Central GOA Rockfish can be reapportioned for use by other non-Rockfish Program trawl fisheries during the last season (i.e., the fifth season) of the year (see § 679.21(d)(5)(iii)(B)). The remaining 45 percent of the unused Central GOA Rockfish Program halibut PSC limit is unavailable for use by vessels directed fishing with any gear for the remainder of the fishing year, effectively conserving that halibut biomass for future stock abundance.

*Halibut PSC Sideboard Limits*

Over time, a variety of halibut PSC use limits, commonly known as sideboard limits, have been implemented to limit the amount of halibut PSC available to specific participants in GOA groundfish fisheries. Sideboard limits serve as fishery-specific limits that require participants subject to the sideboard limit to stop fishing for specific groundfish once that sideboard limit is reached. Sideboard limits were adopted as part of the AFA, Amendment 80, and Central GOA Rockfish catch share programs to prevent program participants from using the flexibility provided by catch share allocations to increase their harvests in fisheries not subject to exclusive allocations. Additional detail on the rationale and calculation for specific sideboard limits in these catch share programs is available in the final rules implementing these catch share programs and is not repeated here (for the AFA see 67 FR 79692, December 30, 2002; for the Amendment 80 Program see 72 FR 52668, September 14, 2007; and for the Central GOA Rockfish Program, see 76 FR 81248, December 27, 2011).

In the GOA, AFA catcher vessels are split into two categories: those subject to halibut PSC sideboard limits and those exempt from halibut PSC sideboard limits. Sideboard limits for AFA catcher vessels subject to sideboard limits (non-exempt AFA catcher vessels) are calculated based on the catch histories of the non-exempt AFA catcher vessels (see § 679.64(b)(4)). Halibut PSC sideboard limits for non-exempt AFA catcher vessels are established as a percentage of each seasonal apportionment assigned to trawl gear deep-water and shallow-water fisheries, rather than as a percentage of the annual trawl PSC limit. There is no seasonal apportionment for trawl gear deep-water fishery in the fourth season, so there is no AFA halibut PSC sideboard limit.

Instead, non-exempt AFA catcher vessels are limited in the fourth season to any AFA halibut PSC sideboard limit that may remain after the end of the third season deep-water fishery. Additionally, the deep-water and shallow-water fisheries are combined for trawl gear in the fifth season; therefore, there is a combined halibut PSC sideboard limit for deep-water and shallow-water fisheries for non-exempt AFA catcher vessels. If AFA halibut PSC sideboard limits in one season are not fully used then the remaining amount of that sideboard limit may be added to the next seasonal sideboard limit. Conversely, if a seasonal AFA halibut PSC sideboard limit is exceeded then the overage amount is deducted from the next season's AFA halibut PSC sideboard limit. AFA catcher/processors are not assigned a halibut PSC sideboard limit because they are prohibited from fishing any species of groundfish in the GOA (see § 679.7(k)(1)(ii)).

Halibut PSC sideboard limits are established for vessels fishing under the Amendment 80 Program, which includes only trawl catcher/processor vessels (see the definition of ''Amendment 80 vessels'' at § 679.2). Halibut PSC sideboard limits for the Amendment 80 Program are based on a percentage of the annual halibut PSC limit for trawl gear. This halibut PSC sideboard limit is further apportioned by deep-water and shallow-water fishery, and among the five trawl seasons (see Table 31 to part 679). Unlike the AFA halibut PSC sideboard limits, there are specific sideboard limits established for the deep-water and shallow-water fisheries in the fourth and fifth seasons. Any remaining amount of an Amendment 80 halibut PSC sideboard limit is not added to the next seasonal sideboard limit.

Catcher/processors participating in the Central GOA Rockfish Program are also subject to halibut PSC sideboard limitations. Catcher/processors are subject to halibut PSC sideboard limits for the trawl deep-water and shallow-water fisheries from July 1 through July 31 (see § 679.84(e)(5)). These halibut PSC sideboard limits only apply when a catcher/processor is not fishing under the authority of a Central GOA Rockfish Program cooperative quota permit in the Central GOA (see § 679.84(e)). Halibut PSC sideboard limits for the Central GOA Rockfish Program are established as a percentage of the annual trawl halibut PSC limit. Halibut PSC sideboard limits are not established for catcher vessels in the Central GOA Rockfish Program because those vessels are prohibited in July from fishing for specific flatfish species that typically have higher rates of halibut PSC use (see § 679.84(d)).

Table 3 summarizes the halibut PSC sideboard limits assigned to the AFA, Amendment 80, and Central GOA Rockfish Programs. Table 3 lists the percentage of the trawl halibut PSC limit assigned as Amendment 80 and Central GOA Rockfish Program sideboard limits, the percentage of the seasonal trawl apportionment assigned as an AFA halibut PSC sideboard limit, and the specific amount of the limit. The amount of the halibut PSC sideboard limit assigned to each of these fisheries is calculated using an annual trawl halibut PSC limit of 1,973 mt as specified in the final 2013 and 2014 harvest specifications for the GOA (78 FR 13162, February 26, 2013).

TABLE 3—FINAL 2013 AND 2014 PACIFIC HALIBUT PSC SIDEBOARD LIMITS

[Values are in metric tons]

| | AFA (Non-exempt catcher vessels only) | | Amendment 80 program (cather/processors only) | | Central GOA rockfish program (catcher/processors only) | |
|---|---|---|---|---|---|---|
| | Deep-water fishery | Shallow-water fishery | Deep-water fishery | Shallow-water fishery | Deep-water fishery | Shallow-water fishery |
| January 20–April 1 ..... | 34.0% of 444 mt (151 mt) | 7.0% of 99 mt (7 mt) | 1.15% (23 mt) | 0.48% (9 mt) | N/A. | |
| April 1–July 1 ..... | 34.0% of 99 mt (34 mt) | 7.0% of 296 mt (21 mt) | 10.72% (212 mt) | 1.89% (37 mt) | N/A. | |
| July 1–July 30 (Central GOA Rockfish Program only). | N/A | | N/A | | 2.5% (49 mt) | 0.1% (2 mt). |
| July 1–September 1 .... | 34.0% of 197 mt (67 mt) | 7.0% of 395 mt (28 mt) | 5.21% (103 mt) | 1.46% (29 mt) | N/A. | |
| September 1–October 1. | 34.0% of 0 mt (0 mt) | 7.0% of 148 mt (21 mt) | 0.14% (3 mt) | 0.74% (15 mt) | N/A. | |
| October 1–December 31. | 20.5% of 296 mt (61 mt) | | 3.71% (73 mt) | 2.27% (45 mt) | N/A. | |

## Objectives of and Rationale for Amendment 95 and This Proposed Rule

The following objective was adopted by the Council with respect to this proposed action:

The Council has long been cognizant of, and continues to recognize the extreme importance of halibut to all resource user groups. The Council also acknowledges that, for a wide variety of reasons, the dynamics of the directed and non-directed halibut fisheries have changed significantly since halibut PSC limits were first established. Given concerns with the current halibut PSC limits in the GOA, and the effect this PSC has on both directed fishing opportunities and productivity of the stock, there is a need to evaluate existing halibut PSC limits and the way in which these limits are established.

The objective of the proposed action is to reduce halibut PSC limits for the GOA groundfish fisheries. In years of low halibut PSC use, the PSC limit reduction may not be a constraint. In those years the groundfish sectors would not be affected by the proposed changes. Reductions in the halibut PSC limit will generate halibut savings in years of relatively high halibut PSC. In years that halibut PSC savings occur, they will benefit the halibut resource and the halibut directed fisheries dependent on the GOA halibut resource. Conversely, groundfish harvesters will have their harvest constrained in those years. The reductions in groundfish harvest will impact revenue generated from the fisheries. The magnitude of the revenue change will depend on the quantity of groundfish harvest foregone and the price flexibility of those groundfish species.

The proposed halibut PSC limit reductions are necessary to minimize halibut bycatch to the extent practicable in the GOA groundfish fishery, while at the same time achieving optimum yield from the groundfish fishery. The Council considered a range of alternatives to assess the impacts of minimizing halibut bycatch to the extent practicable while preserving the potential for the full harvest of the TACs assigned to the trawl and hook-an- line sectors. The Council considered changes in groundfish and halibut management programs and fishing patterns, environmental conditions, fishing technology, and knowledge of halibut and groundfish stocks. The Council considered the potential trade-offs between the halibut saved and the forgone groundfish catch. The Council believes, and NMFS agrees, that the proposed PSC limit reductions minimize halibut bycatch to the extent practicable given the management measures currently available to the fleet, the derby–style prosecution of some components of the groundfish fishery, the uncertainty about the extent to which halibut bycatch in the groundfish fishery has adverse effects on the halibut resource, and the need to ensure that catch in the trawl and hook and line fisheries contributes to the achievement of optimum yield in the groundfish fisheries.

The Council considered changes to the halibut resource, and the needs of the directed halibut fishery user groups, including the commercial, charter, subsistence, personal use, and unguided sport sectors. The halibut resource is fully allocated. Recent declines in halibut exploitable biomass, particularly in the GOA, underscore the need to minimize bycatch of halibut in the groundfish fisheries to the extent practicable. Since the existing GOA halibut PSC limits were established, the total biomass and abundance of halibut has varied, and in recent years the stock is experiencing an ongoing decline in size-at-age for all ages in all areas. Although the cause of this decline in size-at-age is not fully understood, the commercial halibut sector has experienced decreased catch limits as a result. The IPHC accounts for incidental halibut catches in the groundfish fisheries, recreational and subsistence catches, and other sources of halibut mortality before setting commercial halibut catch limits each year. From 2002 to 2011 the commercial catch limit for halibut in the GOA in combined IFQ Regulatory Areas 2C (Southeast Alaska), 3A (South central Alaska), and 3B (Southwest Alaska) declined by almost 50 percent. In addition, the guideline harvest level, which establishes a benchmark for harvests in the charter halibut fishery, has been reduced, particularly in IPHC Regulatory Area 2C. Further, the charter halibut sector has experienced increased catch restrictions in the GOA in recent years. Additional detail on the status of halibut stocks, commercial catch limits, and the guideline harvest level, is provided in the final rule establishing IPHC annual management measures for the Pacific halibut fishery in 2013 (see 78 FR 16423, March 15, 2013 and 78 FR 18323, March 26, 2013).

Although catch limits for the commercial and charter halibut fisheries have declined in recent years, GOA halibut PSC limits have remained relatively constant. The proposed action would require trawl and hook-and-line sectors to minimize halibut bycatch during the prosecution of their respective groundfish fisheries. The Council balanced a number of competing objectives for fishery conservation and management in its selection of its Preferred Alternative. These include (1) achieving the optimum yield from each groundfish fishery without overfishing the stocks, (2) considering the importance of fishery resources to fishing communities and minimizing adverse economic impacts on such communities, and (3) minimizing bycatch to the extent practicable. As discussed in section 4.6.4 of the Analysis, the Council considered the ability of trawl and hook-and-line groundfish fisheries to reduce halibut PSC use, how much of the halibut PSC limit had been left unused by each sector in the past, and the potential effects of reduced PSC limits on GOA groundfish catch and revenue.

The Analysis included a retrospective evaluation of the impacts of PSC limit reductions on GOA ground fish catches from 2003 through 2010. This evaluation provided estimates of groundfish catch and revenue that would have been foregone in the GOA groundfish fisheries if halibut PSC limits had been reduced from current levels from 2003–2010. However, while historical catch and halibut PSC information can be used to assess whether and when fisheries would close if reduced PSC limits had been in place in previous years, the Council and NMFS believe groundfish trawl and hook-and-line fishery participants can modify their behavior to avoid a closure. The Analysis reviewed potential measures that could be adopted by participants to reduce halibut PSC use and factors that are likely to affect the willingness of participants to adopt those measures. Although the proposed halibut PSC limit reductions may result in earlier season closures and an attendant reduction in target groundfish catches when the lower seasonal PSC limit is reached, the frequency and extent of early season closures and effects of such closures will vary across gear types and segments of the fleets to the extent that fleets are willing to change fishing behavior in response to lower PSC limits. If sector participants are successful in taking action to control halibut PSC use to avoid a closure, additional gross revenues may be gained.

Notwithstanding measures that the trawl and hook-and-line sectors can take to avoid halibut PSC use and potential fishery closures, the Council and NMFS recognize that reducing halibut PSC limits will likely come at a cost to individual participants and to the hook-and-line and trawl sectors as a whole. The proposed action could potentially impact revenue generated from the groundfish fisheries and some groundfish fisheries may not harvest their full TAC. The Analysis considered not only changes in gross revenues, but also changes in costs resulting from the fleets' altered fishing behavior to minimize halibut bycatch. The Council and NMFS balanced these potential financial effects of reduced groundfish harvests and increased costs to groundfish fleets with the benefits of maintaining a healthy marine ecosystem for fishermen and communities that depend on the halibut resources. The proposed reduction in halibut PSC limits could benefit participants in the directed halibut fisheries, such as the commercial and charter sport fisheries, if it results in increased levels of harvestable halibut and increased catch limits for directed halibut fisheries. Halibut processors might also benefit from this proposed action, along with

halibut charter clients, and consumers of halibut harvested in the directed fisheries. As described later in the preamble, the proposed action minimizes adverse economic impacts to the extent practicable for groundfish sectors that will experience the greatest halibut PSC reductions through measures such as phasing-in reductions over three years, allowing for roll-overs of halibut PSC sideboard limits from one season to the subsequent season, and allowing for the aggregation of halibut PSC limits during the second season deep-water and shallow-water fisheries.

During public testimony, some members of the public recommended greater reductions of halibut PSC limits. However, halibut bycatch cannot be avoided completely, and the Council and NMFS believe that even more stringent PSC limit reductions would severely limit the groundfish fleet. Currently, most of the groundfish fleet in the GOA is involved in competitive fisheries and does not have available tools, such as catch share programs or fishery cooperatives, that have been demonstrated to successfully reduce halibut PSC and still maintain current harvest levels of groundfish (for an example see the discussion of the Central GOA Rockfish Program in section 4.5.5 of the Analysis). As noted above, the Council and NMFS anticipate that participants in the GOA trawl and hook-and-line groundfish fisheries will need to modify their fishing behavior in response to lower PSC limits. Based on public testimony received from industry participants on the extent to which individual vessels are able to change their fishing behavior to reduce PSC use, the Council and NMFS believe that the proposed halibut PSC reductions minimize halibut bycatch to the extent practicable.

**The Proposed Action**

This proposed action would: (1) Establish GOA halibut PSC limits in Federal regulation; (2) reduce the GOA halibut PSC limits for vessels using trawl and hook-and-line gear; (3) proportionately reduce trawl halibut PSC sideboard limits for American Fisheries Act (AFA), Amendment 80, and Central GOA Rockfish Program vessels; and (4) modify the accounting for halibut PSC sideboard limits for Amendment 80 vessels, and halibut PSC used by trawl vessels from May 15 through June 30 to maintain groundfish harvest while achieving the halibut PSC limit reductions intended by this action. This action would reduce halibut PSC limits to the extent practicable consistent with National Standard 9, while at the same time achieving, on a continual basis, the optimum yield from the groundfish fishery. The preceding four actions are discussed in detail in the following sections of this preamble.

*Action 1: Establishing the GOA Halibut PSC Limits in Federal Regulation*

This proposed action would modify the process by which the GOA halibut PSC limits are set. As previously discussed, the GOA halibut PSC limits currently are established through the annual GOA groundfish harvest specifications process. This action proposes including the overall annual GOA halibut PSC limits for the trawl and hook-and-line sectors in Federal regulations, a process that would mirror the current process for the Bering Sea and Aleutian Islands halibut PSC limits. Once the GOA halibut PSC limits are published as Federal regulations, those limits could then be modified only by amending those regulations. The Council acknowledged, and NMFS agrees, that publishing the annual halibut PSC limits in Federal regulation will streamline the harvest specifications process and provide greater certainty about what annual PSC limits would be for those sectors subject to such limits. The groundfish harvest specifications process is complex and time-sensitive, as the final harvest specifications have to be in place as soon as possible each year. Addressing potential changes to GOA halibut PSC limits during the harvest specifications process carries the risk of delaying the harvest specification of annual groundfish harvest limits, which is the primary objective of the harvest specifications process.

Publishing the annual halibut PSC limits in Federal regulation is expected to:

- Resolve implementation and timing issues inherent in the current two-year harvest specification schedule. The first season to which NMFS applies halibut PSC limits on the trawl groundfish fishery occurs from January 20 to April 1, and the first season to which NMFS applies halibut PSC limit on the hook-and-line halibut PSC limit occurs from January 1 to June 10 of each year. Currently, GOA halibut PSC limits are set for two consecutive years (as are groundfish catch limits), so that groundfish fishing begins on January 1 based on groundfish TACs and PSC limits that were approved by the Council over a year earlier. Once the next 2-year set of harvest specifications are finalized in February or March, the initial annual groundfish TACs are superseded by new catch limits. For example, the final 2013 and 2014 harvest specifications for the GOA published on February 26, 2013, well after the opening of the hook-and-line groundfish fishery season on January 1, 2013. Establishing the GOA halibut PSC limits for trawl and hook-and-line gear sectors in Federal regulation would ensure the halibut PSC limits are in place at the start of the fishing year. This would eliminate the potential that NMFS would have to modify a halibut PSC limit once fishing has already begun for a year should there be changes to that limit during the development of the annual harvest specifications.
- Facilitate potential development of long term PSC management tools for the groundfish fisheries. Such development would benefit from a stable regulatory environment, rather than annual halibut PSC limits that could be subject to change during the annual harvest specification process. Should it become apparent that further halibut bycatch reductions are practicable, regulations could be amended to further revise halibut PSC limits.

NMFS notes that once the annual halibut PSC limits are established in Federal regulation as proposed by this action, the Council and NMFS will continue to use the harvest specification process to apportion annual halibut PSC limits between fisheries and gear categories. The Council will consider the best available information when recommending these apportionments of halibut PSC limits consistent with existing regulations at § 679.21(d)(5).

*Action 2: Reducing the GOA Halibut PSC Limits for Trawl and Hook-and-Line Sectors*

This proposed action would reduce the GOA halibut PSC limits for vessels harvesting groundfish in the GOA. The proposed GOA halibut PSC limit for each gear and fishery category would be reduced from the current annual halibut PSC limits specified in the final 2013 and 2014 harvest specifications in the GOA (78 FR 13162, February 26, 2013) and established in regulation as follows:

- Hook-and-line catcher/processor: 7 percent reduction.
- Hook-and-line catcher vessel: 15-percent reduction, phased in over 3 years with a 7 percent reduction the first year, an additional 5 percent reduction the second year, and a final 3 percent reduction in the third year.
- Hook-and-line demersal shelf rockfish Southeast Outside District: 1 metric ton reduction.
- Trawl: 15-percent reduction, phased-in over 3 years with a 7 percent reduction the first year, an additional 5 percent reduction the second year, and

a final 3 percent reduction in the third year.

The following sections describe the proposed halibut PSC limit reductions for the trawl and hook-and-line gears.

*Phase-in Schedule for the Proposed Halibut PSC Limit Reductions for the Trawl and Hook-and-Line Sectors*

The Council recognized that giving the groundfish fleets additional time to individually and collectively adapt to the newly reduced halibut PSC limits under this proposed action would minimize some of the adverse consequences for sectors with the largest halibut PSC limit reductions. This phased-in approach would mitigate the impact the halibut PSC limit reductions have on groundfish fishery revenue and, as a result, mitigate the loss to communities reliant on groundfish resources. For this reason, the Council recommended phasing-in the reductions of halibut PSC limits for the trawl and catcher vessel hook-and-line sectors because these sectors will experience the largest halibut PSC limit reductions. The phased-in implementation would allow additional time for these sectors to develop management tools and modify their fishing practices. As described below, NMFS intends that the phased-in approach to halibut PSC limit reductions would provide the groundfish sectors subject to the largest halibut PSC limit reductions with continued participation in the groundfish fisheries as they adapt to the lower halibut PSC limits, and would, to the extent practicable, minimize adverse economic impacts of the halibut PSC limit reductions.

The specific annual amounts of the phased-in reductions are intended to reduce halibut PSC while also taking account of the needs of affected groundfish fisheries to efficiently adapt to the reductions. The Council considered a broad range of potential reductions to halibut PSC limits, including no reduction relative to the current halibut PSC limits and a 15-percent reduction for all trawl and hook-and-line fisheries in the first year of implementation. The phase-in approach and timeline proposed under this rule would result in the largest percentage reduction in the first year, a slightly smaller percentage reduction in the second year, and the smallest percentage reduction in the third year, to provide meaningful reductions in halibut PSC limits as quickly as possible. This approach would allow groundfish fisheries to adapt to the proposed changes by, for example, improving on-the-ground communication of halibut PSC rates to reduce groundfish harvests in areas of high halibut PSC, developing and using halibut excluder devices, or developing other measures that could reduce halibut bycatch in the GOA groundfish fisheries.

The Council intended for the initial halibut PSC limit reductions to be in effect for the 2014 fishing year. This preamble assumes that 2014 will be the first year the proposed reductions would be effective for purposes of the examples provided. Table 4 portrays the proposed halibut PSC limit reductions for the trawl gear sector and the hook-and-line gear catcher vessel sector. NMFS would implement the 7-percent reduction in the first year of implementation of this proposed action, and then take the second and third phase of reductions relative to the 2013 annual halibut PSC limits. NMFS would not take the additional percentages of the second and third year off of the already reduced PSC limits from the first year. Examples of the amounts associated with each percentage reduction are depicted in subsequent tables.

Table 4 also shows that the 7-percent proposed halibut PSC limit reduction for the hook-and-line catcher/processor sector and the 1 mt reduction for the hook-and-line DSR fishery would be effective in the 2014 fishing year, or the first year of implementation of a final rule for this action. The Council elected to reduce the halibut PSC limit for the DSR fishery by 1 mt instead of a percentage that would increase over time. The rationale for this fixed reduction in the halibut PSC limit for the DSR fishery is described in the following section of this preamble.

TABLE 4—PROPOSED PHASE-IN SCHEDULE OF HALIBUT PSC REDUCTIONS

| Sector or fishery | Total proposed reduction relative to 2013 | Reduction first year (2014) | Reduction second year (2015) | Reduction third year (2016 and each year thereafter) |
|---|---|---|---|---|
| Hook-and-line demersal shelf rockfish Southeast Outside District. | 1 mt | 1 mt | * | * |
| Hook-and-line catcher/processor sector | 7 percent | 7 percent | * | * |
| Hook-and-line catcher vessel sector | 15 percent | 7 percent | 5 percent | 3 percent |
| Trawl sector | 15 percent | 7 percent | 5 percent | 3 percent |

*Hook-and-Line DSR Fishery Proposed Reduction*

This action would reduce the halibut PSC limit for the hook-and-line DSR fishery in the Southeast Outside District by 1 mt, from 10 mt in 2013, to 9 mt in 2014 and each year thereafter. The 1 mt reduction in the halibut PSC limit for the DSR fishery would accommodate the purpose of this action, i.e., reduce halibut PSC limits in the commercial groundfish fisheries to the extent practicable. The Council believed that it was necessary to apply the halibut PSC limit reductions to all components of the hook-and-line fisheries, including the commercial DSR fishery. A 1 mt reduction in the halibut PSC limit apportioned to the DSR fishery should not have an adverse impact on the directed fishery for DSR, given the decreasing participation in this fishery in recent years. In consideration of the small amount of halibut PSC limit assigned to the DSR fishery, and the relatively low estimated amount of halibut PSC use in the DSR fishery, the Council did not recommend phasing-in reductions over a period of time, or establishing a percentage of a reduction. Reducing halibut PSC limits beyond 1 mt for the directed DSR fishery could potentially curtail harvest of the annual DSR TAC. Given the estimated low amount of halibut PSC use in the DSR fishery, the Council and NMFS believe that the benefits of further halibut PSC reductions in the DSR fishery would not justify the potential costs of greater reductions for this fishery.

The State of Alaska and NMFS jointly manage DSR. DSR is also caught incidentally in other commercial fisheries, such as the IFQ halibut fishery, and in sport fisheries. Since 2004, the majority of annual DSR landings were taken as incidental catch in other fisheries. For example, of the

293 mt TAC for DSR in 2012, 128 mt were available for the DSR commercial directed fishery, of which 105 mt were harvested. Because harvesters may use much of the available DSR as incidental catch in the halibut IFQ fishery, reducing the DSR directed fishery's halibut PSC limit should not result in changes in the management of the DSR directed fishery.

*Other Hook-and-Line Fisheries Proposed Reductions*

This action proposes to reduce the other hook-and-line catcher/processor and catcher vessel sectors' current overall halibut PSC limits, but by different percentage amounts. As depicted in Table 4, the other hook-and-line catcher/processor sector would be subject to a total halibut PSC limit reduction of 7 percent, with the reduction fully implemented in 2014. The other hook-and-line catcher vessel sector would be subject to a phased-in halibut PSC limit reduction of 15 percent, beginning with a 7 percent reduction in 2014. These percentage reductions would be specified in regulations at § 679.21. The reductions would be made in conjunction with the existing method used to annually apportion the other hook-and-line PSC limit between the hook-and-line catcher vessel and catcher/processor sectors.

*A. Other Hook-and-Line Annual PSC Limit Apportionments to the Catcher Vessel and Catcher/Processor Sectors*

Section 679.21(d)(4)(iii) contains formulas that NMFS uses to apportion the annual other hook-and-line halibut PSC limit between the catcher vessel and catcher/processor sectors. This approach was designed to integrate annual differences in how the combined Western and Central Pacific cod biomass is apportioned between the Western GOA and Central GOA, based on the findings of the annual Pacific cod stock assessment. This stock assessment calculates, among various other biological factors, how the overall Pacific cod biomass is distributed between these two management areas. The formulas set forth in regulation provide a means to annually adjust the apportionment of the other hook-and-line halibut PSC limit based on annual Pacific cod distribution. The hook-and-line catcher/processor sector receives a larger annual share of the total Pacific cod TAC in the Western GOA than the hook-and-line catcher vessel sector. Conversely, the hook-and-line catcher vessel sector receives a larger annual share of the total Pacific cod TAC in the Central GOA.

The Council recommended, and NMFS agrees, that NMFS should continue to use this methodology to apportion the Pacific cod TAC between the other hook-and-line catcher vessel and catcher/processor sectors before the proposed halibut PSC limit reductions are calculated under the proposed action. The formulaic distribution of the other hook-and-line halibut PSC limit would allow the reduced other hook-and-line PSC limit to be apportioned differently each year to better match the potential halibut PSC use by each sector. This change is intended to align the annual allocations of Pacific cod between the two hook-and-line sectors with their respective allotments of the other hook-and-line halibut PSC limit, which is consistent with National Standard 1 to achieve optimum yield from the GOA groundfish fisheries. For example, if the annual stock assessment determines that there is a greater proportion of Pacific cod in the Central GOA than the Western GOA (based on the average biomass distribution estimated in the stock assessment), then the hook-and-line catcher vessel sector would receive more of the other hook-and-line halibut PSC limit than the hook-and-line catcher/processor sector. This methodology is described in the final rule implementing Amendment 83 to the FMP, which established Pacific cod sector splits in the GOA (76 FR 74670, December 1, 2011).

To implement this component of the action, NMFS proposes to place in regulation the existing other hook-and-line halibut PSC limit of 290 mt. This amount would be integrated into the formulas that apportion this limit between the hook-and-line catcher vessel and catcher/processor sectors, consistent with the intent of Amendment 83 to the FMP and its implementing regulations. This formula would then be used to annually apportion the other hook-and-line halibut PSC limit between sectors prior to making the actual percentage reductions also proposed in this action. Applying the proposed other hook-and-line halibut PSC limit reductions to the current 290 mt halibut PSC limit prior to apportioning it between the other hook-and-line sectors is not possible because (1) the division of this limit varies according the annual apportionment of the Western GOA and Central GOA Pacific cod TACs, and (2) the catcher vessel and catcher/processor sectors would operate under different PSC limit percentage reductions after the first year of the reduction phase-in. This methodology is also described in detail in Section 4.6.3.2 of the Analysis.

Once the other hook-and-line halibut PSC limit is divided between the hook-and-line catcher vessels and catcher/processors, the halibut PSC limit percentage reductions proposed in this action would then be applied to each individual sector's halibut PSC limit. These reduced limits would then be annually specified as halibut PSC limit apportionments by fishery category and season in the annual harvest specifications.

*B. Applying the Proposed Halibut PSC Limit Reductions to the Other Hook-and-Line Catcher/Processor Sector*

This action proposes to reduce the halibut PSC limit for the hook-and-line catcher/processor sector by 7 percent the first year of implementation under this proposed action, and retain that level thereafter. For example, using the 2013 Pacific cod apportionment in conjunction with the other hook-and-line halibut PSC limit apportionment formulas in § 679.21(d), the proposed hook-and-line catcher/processor halibut PSC limit would be reduced to 115 mt in 2014 from 124 mt in 2013.

The Council recommended different percentage reductions for other hook-and-line catcher/processors (7 percent) versus other hook-and-line catcher vessels (15 percent) because the catcher/processor sector already received a halibut PSC limit reduction under regulations implementing Amendment 83 to the FMP (76 FR 74670, December 1, 2011), and has collectively taken measures to reduce its halibut PSC usage in recent years. The hook-and-line catcher/processor sector has been able to reduce its PSC use with management tools not available to the trawl gear sector or hook-and-line catcher vessel sector. Specifically, the hook-and-line catcher/processor sector decreased its halibut PSC use by forming a voluntary cooperative in 2010. The voluntary hook-and-line catcher/processor cooperative members agreed to divide the available halibut PSC limit, and to a variety of other measures (e.g., avoid fishing in areas with known concentrations of halibut and at times of relatively high halibut PSC rates). These measures are intended to reduce the chance that this sector's halibut PSC would result in a fishery closure.

The Council recommended reducing the hook-and-line catcher/processor sector by 7 percent for this proposed action to acknowledge the PSC limit reductions implemented under Amendment 83, and the voluntary steps already taken to decrease the sector's halibut PSC use in recent years. A reduction greater than 7 percent could further reduce halibut bycatch by the

hook-and-line catcher/processor sector, but at increased potential for adverse economic impacts on this sector, either through foregone groundfish catch or increased operating costs as this fleet attempts to avoid halibut bycatch. As discussed in section 4.6 of the Analysis, the informal hook-and-line catcher/processor sector cooperative in the GOA have undertaken measures to reduce halibut PSC use in that sector since 2010. Additional measures to further reduce halibut bycatch could result in increased operating cost for this sector and forgone groundfish catch. The Council and NMFS believe that a 7 percent reduction from current halibut PSC limits in addition to this sector's previous halibut bycatch use reductions will minimize halibut bycatch in the hook-and-line-sector to the extent practicable.

*C. Applying the Proposed Halibut PSC Limit Reductions to the Other Hook-and-Line Catcher Vessel Sector*

The proposed halibut PSC limit reduction for the other hook-and-line catcher vessel sector would be phased-in over 3 years at 7 percent in 2014, or the first year of implementation of this action, an additional 5 percent in 2015, or the second year, and an additional 3 percent in 2016, or the third year, for a total reduction of 15 percent from the 2013 levels effective beginning 2016 and remaining effective thereafter. Table 5 shows how the other hook-and-line PSC limit would be apportioned between the catcher vessel and catcher/processor sectors, as well as by season. Using the 2013 Pacific cod apportionments as an example, the proposed hook-and-line catcher vessel halibut PSC limits would decrease from 166 mt in 2013, to 154 mt in 2014, to 146 mt in 2015, and to 141 mt in 2016 and each year thereafter under this action. The 15 percent reduction of the halibut PSC limit apportioned to the other hook-and-line catcher vessel sector would achieve this action's objective of minimizing halibut bycatch in the GOA groundfish fisheries to the extent practicable. The Council and NMFS determined that the proposed PSC limit reduction would provide the hook-and-line catcher vessel sector with incentives to reduce PSC use by modifying fishing behavior to avoid groundfish fishery closures. As discussed in section 4.6.4 of the Analysis, some catcher vessels currently undertake efforts to avoid halibut through informal arrangements, in which vessels share on-the-grounds information concerning halibut encounter rates, helping vessels to avoid areas with relatively high halibut PSC. The Council and NMFS expect participants in the hook-and-line catcher vessel sector to modify fishing behavior and increase coordination to expand their use of these types of bycatch avoidance tools to reduce halibut PSC use.

Table 5 provides an example of the 2013 apportionment of Pacific cod TACs in the Western and Central GOA to demonstrate how the proposed other hook-and-line halibut PSC limit reduction would be applied to the hook-and-line catcher vessel and catcher/processor sectors. The amount of halibut PSC that could be used by the other hook-and-line fishery after implementation of this action is also shown in Table 5. Effectively, the amount of halibut PSC that could be used would decrease under this action to 269 mt in 2014, to 261 mt in 2015, and finally to 256 mt in 2016. These amounts are based on the premise that there is no change in the apportionment of the Pacific cod biomass between the Western and Central GOA during those years.

TABLE 5—EXAMPLE OF THE OTHER HOOK-AND-LINE HALIBUT PSC LIMITS (IN mt) UNDER THIS PROPOSED ACTION BASED ON THE 2013 APPORTIONMENT OF THE WESTERN AND CENTRAL GOA PACIFIC COD TACS AND ASSOCIATED DISTRIBUTION OF THE ANNUAL OTHER HOOK-AND-LINE HALIBUT PSC LIMIT

| Year | Sectors | Proposed reduction (percent) | Total allowance [1] | 1st season January 1 to June 10 (86%) | 2nd season June 10 to September 1 (2%) | 3rd season September 1 to December 31 (12%) |
|---|---|---|---|---|---|---|
| 2013 | Total Allowance | | 290 | 249 | 6 | 35 |
| | Catcher vessel | N/A | 166 | 143 | 3 | 20 |
| | Catcher/processor | N/A | 124 | 106 | 2 | 15 |
| 2014 | Total Allowance | | 269 | 232 | 5 | 32 |
| | Catcher vessel | 7 | 154 | 133 | 3 | 19 |
| | Catcher/processor | 7 | 115 | 99 | 2 | 14 |
| 2015 | Total Allowance | | 261 | 225 | 5 | 32 |
| | Catcher vessel | 12 | 146 | 126 | 3 | 18 |
| | Catcher/processor | 7 | 115 | 99 | 2 | 14 |
| 2016 and each year thereafter. | Total Allowance | | 256 | 220 | 5 | 31 |
| | Catcher vessel | 15 | 141 | 121 | 3 | 17 |
| | Catcher/processor | 7 | 115 | 99 | 2 | 14 |

[1] The total allowance reflects the sum of the amount available to each sector. After 2013, the 290 mt limit would remain in regulation at § 679.21(d) as part of the formulas that provide the basis for apportioning the annual halibut PSC limit between the hook-and-line catcher/processor and catcher vessel sectors. The actual annual PSC limit would decrease (in this example) to 256 mt in 2016.

*Trawl Sector Proposed Reduction*

The amount of the proposed trawl halibut PSC limit reduction would be based on reductions from the current trawl halibut PSC limit of 1,973 mt as established in the final 2013 and 2014 harvest specifications for the GOA (78 FR 13162, February 26, 2013). This base amount includes a reduction of 27.4 mt from the trawl halibut PSC limit implemented under the Central GOA Rockfish Program (76 FR 81248, December 27, 2011). Similar to the other hook-and-line catcher vessel sector, the proposed halibut PSC limit reduction for the trawl sector would be 15 percent and phased-in over 3 years. The halibut PSC limit would be reduced by 7 percent in 2014, or the first year of implementation, an additional 5 percent in 2015, or the second year, and a final 3 percent in 2016, or the third year, for a total reduction of 15 percent from the status quo. This new PSC limit in 2016 would remain in effect each year thereafter. In selecting trawl halibut PSC limit reduction, the Council balanced the broad goal of minimizing halibut bycatch to the extent practicable with trawl fishery participants' need for a

sufficient amount of halibut PSC to harvest available GOA groundfish TACs, and thereby support the achievement of optimum yield from the GOA groundfish fishery.

*A. Rockfish Program Halibut PSC Apportionment*

The trawl halibut PSC limit of 191.4 mt apportioned to the Central GOA Rockfish Program would not be reduced by this action. The Rockfish Program was exempted from the proposed halibut PSC limit reductions because participants in the Rockfish Program already had their apportionment of halibut PSC limit reduced relative to historic use of halibut PSC in the Central GOA rockfish fisheries when the Council adopted the program. NMFS implemented the Rockfish Program on December 27, 2011 (76 FR 81248) and reduced the halibut PSC limit apportionment by 12.5 percent of the fishery's historical annual use (during the 2000 through 2006 qualifying period). The 12.5-percent reduction resulted in 27.4 mt of halibut PSC limit that is not allocated for use annually, leaving 191.4 mt to support the Central GOA Rockfish Program.

In addition, the Central GOA Rockfish Program limits the maximum amount of any unused halibut PSC limit from Central GOA Rockfish Program participants that may be made available to the non-Rockfish Program trawl fisheries. This reallocation of unused halibut PSC limit is commonly known as a reapportionment. The annual reapportionment of any unused portion of the 191.4 mt Rockfish Program halibut PSC limit is reduced by 45 percent, and as a result only 55 percent of the annual, unused halibut PSC limit may be available for reapportionment to non-Central GOA Rockfish Program fisheries during the fifth season.

The halibut PSC reductions already implemented through the Rockfish Program minimize halibut bycatch in the rockfish fishery to the extent practicable. These reductions limit halibut mortality both by limiting the amount of halibut PSC that is initially allocated as halibut PSC CQ and by limiting the amount of halibut PSC that may be reassigned. In developing the Rockfish Program, the Council sought to balance the need to provide adequate halibut PSC for use by rockfish cooperatives, recognize patterns of reduced halibut PSC use once exclusive harvest privileges were established, and meet broader goals to reduce halibut mortality. The Analysis supporting the current proposed action projects that the 45-percent reduction of unused halibut PSC limit would be equal to, or greater than, the 15-percent reduction applied to the general trawl halibut PSC limit under this action based on a review of the amount of unused halibut PSC limit in the Central GOA Rockfish Program (see Section 4.5.5 of the Analysis for additional detail). Additional details on the specific rationale and methods for halibut PSC limit allocations and reapportionments in the Central GOA Rockfish Program are provided in the final rule implementing that program and are not repeated here (see 76 FR 81248, December 27, 2011).

*B. Applying the Proposed Halibut PSC Limit Reductions to the Trawl Sector*

The proposed reductions to the annual trawl halibut PSC limits do not include a reduction to the current amount of trawl halibut PSC apportioned to the Rockfish Program. NMFS proposes to subtract 191.4 mt of the halibut PSC limit that is apportioned to the Rockfish Program from the overall trawl halibut PSC limit before calculating the percentage reduction to the trawl halibut PSC limit. The 191.4 mt amount would be added back to the trawl halibut PSC limit after calculating the 7, 12, and 15 percent annual reduction during the phased-in implementation of the trawl halibut PSC limit reductions. This would prevent the percentage reductions being proposed for overall annual GOA trawl halibut PSC limit from being applied to the halibut PSC limit apportioned to the Central GOA Rockfish Program.

The total trawl halibut PSC limit would be calculated using the following formula:

Trawl Halibut PSC Limit = ((1,973 mt − 191.4 mt) * X) + 191.4 mt

In this formula, X is the percentage of the original allocation the trawl gear sector would receive of the phased-in percentage PSC limit reductions (7 percent the first year, 12 percent the second year, and 15 percent the third and each year thereafter). In the first year of implementation of this action, the trawl gear sector would receive 1,848 mt, or 93 percent (0.93) of the 2013 trawl PSC limit of 1,973 mt. In the second year, the trawl gear sector would receive 1,759 mt, or 88 percent (0.88) of the 2013 trawl PSC limit of 1,973 mt. Finally, in the third and each year thereafter, the trawl gear sector would receive 1,706 mt, or 85 percent (0.85) of the 2013 trawl PSC limit of 1,973 mt. The annual halibut PSC limits for the deep-water fishery, shallow-water fishery, and each of those fisheries respective seasonal apportionments would continue to be recommended by the Council and published in the annual harvest specifications, rather than in Federal regulations. The proposed halibut PSC limit reductions also would result in changes to the trawl sector's seasonal apportionments of halibut PSC limits. Those changes are discussed below. Table 6 shows the proposed halibut PSC limits for the trawl sector each year for the implementation of this action, if this proposed action is implemented in 2014.

TABLE 6—PROPOSED HALIBUT PSC LIMITS FOR THE TRAWL SECTOR

| Effective dates | Annual trawl gear PSC limit (mt) * | Percent reduction |
|---|---|---|
| 2013 (status quo) | 1,973 | N/A |
| 2014 | 1,848 | 7 |
| 2015 | 1,759 | 12 |
| 2016 and each year thereafter | 1,706 | 15 |

* This amount retains the existing 191.4 mt annual halibut PSC limit allocated to the Rockfish Program without any reduction to this allocation.

*C. Changes in Trawl Seasonal Apportionments*

As discussed earlier in this preamble in the ''Background'' section under ''GOA Annual Halibut PSC Limits, Fishery Categories, and Seasonal Apportionments,'' section 679.21(d)(5) authorizes NMFS to seasonally apportion the annual trawl halibut PSC limits after consulting with the Council. During the annual harvest specifications process the Council recommends and NMFS assigns the specific amount of halibut PSC limit to each of these seasons. Section 679.21(d)(3) and (4) establishes the annual halibut PSC limit apportionments to trawl gear in the

GOA through the annual groundfish harvest specification process.

Table 7 portrays the proposed reduction of annual halibut PSC limit to the trawl sector and the resulting changes to apportionments to the deep-water fishery and shallow-water fishery in each season. Table 7 assumes that the apportionments to the deep-water and shallow-water fishery categories and seasons specified in the final 2013 and 2014 harvest specifications for the GOA (78 FR 13162, February 26, 2013) would be retained in future annual harvest specifications. As shown in Table 7, halibut PSC limit reductions for the trawl sector would result in the deep-water species fishery allowance decreasing from 789 mt in 2013, to 682 mt in 2016 and each year thereafter under this action. The shallow-water species fishery allowance would be reduced from 888 mt in 2013, to 767 mt in 2016 and each year thereafter under this action. The undesignated fifth season allowance would be reduced from 296 mt in 2013, to 256 mt in 2016 and each year thereafter under this action.

TABLE 7—TRAWL FISHERY AND SEASONAL HALIBUT PSC LIMITS BASED ON 2013 APPORTIONMENTS OF THE OVERALL HALIBUT PSC LIMITS

[All values are metric tons, except where noted as percentages]

| Total Trawl Halibut PSC limit | | 1st season January 20 to April 1 | 2nd season April 1 to July 1 | 3rd season July 1 to September 1 | 4th season September 1 to October 1 | 5th season October 1 through December 31 |
|---|---|---|---|---|---|---|
| Annual limit, all categories | | Seasonal share | | | | |
| | | 27.5% | 20% | 30% | 7.5% | 15% |
| 2013 (status quo) | 1,973 | 543 | 395 | 592 | 148 | 296 |
| 2014 (7% reduction) | 1,848 | 508 | 370 | 554 | 139 | 277 |
| 2015 (12% reduction) | 1,759 | 484 | 352 | 528 | 132 | 264 |
| 2016 and each year thereafter (15% reduction) | 1,706 | 469 | 341 | 512 | 128 | 256 |
| Deep-water species fishery | | Seasonal share | | | | |
| | | 12.5% | 37.5% | 50%* | 0% | |
| 2013 (status quo) | 789 | 99 | 296 | 395 | ..... | ..... |
| 2014 (7% reduction) | 739 | 92 | 277 | 178 [370] | ..... | ..... |
| 2015 (12% reduction) | 704 | 88 | 264 | 160 [352] | ..... | ..... |
| 2016 and each year thereafter (15% reduction) | 682 | 85 | 256 | 150 [341] | ..... | ..... |
| Shallow-water species fishery | | Seasonal share | | | | |
| | | 50% | 11.1% | 22.2% | 16.7% | |
| 2013 (status quo) | 888 | 444 | 99 | 197 | 148 | ..... |
| 2014 (7% reduction) | 832 | 416 | 92 | 185 | 139 | ..... |
| 2015 (12% reduction) | 791 | 396 | 88 | 176 | 132 | ..... |
| 2016 and each year thereafter (15% reduction) | 767 | 384 | 85 | 170 | 128 | ..... |
| Undesignated by deep-water or shallow-water species fishery | | Seasonal share | | | | |
| | | | | | | 100% |
| 2013 (status quo) | 296 | ..... | ..... | ..... | ..... | 296 |
| 2014 (7% reduction) | 277 | ..... | ..... | ..... | ..... | 277 |
| 2015 (12% reduction) | 264 | ..... | ..... | ..... | ..... | 264 |
| 2016 and each year thereafter (15% reduction) | 256 | ..... | ..... | ..... | ..... | 256 |

* Number in bracket includes the 191.4 mt Rockfish Program halibut PSC limit.

The Council noted that between 2006 and 2011 (the most recent years available for the Analysis), the deep-water fishery used, on average, about 85 percent of its available halibut PSC limit over the first through fourth seasons. The shallow-water fishery used about 89 percent of its available halibut PSC limit over the same time period. For all five seasons, the entire trawl sector used about 93 percent of its available halibut PSC limit. Although the proposed reductions would likely constrain the trawl sector in the second and third year after implementation, NMFS believes the trawl fisheries could potentially operate longer and produce larger volumes of fish if this sector changes its fishing practices. Historical records and NMFS' management experience in the trawl fisheries indicates that the amount of halibut PSC in the GOA groundfish fisheries can be reduced by increased communication among industry participants and coordination of fishing activities and effort (see section 4.6.4 of the Analysis for additional detail).

*Action 3: Reducing Halibut PSC Sideboard Limits for AFA, Amendment 80, and Rockfish Program Vessels*

As described above in the section titled ''Halibut PSC Sideboard Limits,'' a variety of halibut PSC use limits (commonly known as sideboard limits) have been implemented to restrict the amount of halibut PSC available to specific participants in GOA groundfish fisheries. This proposed rule would not revise the current regulations that establish the methodology for calculating the specific percentage of the annual trawl halibut PSC limit

apportioned to the AFA Program, Amendment 80 sector, or Central GOA Rockfish Program as halibut PSC sideboard limits. Rather, the AFA Program, Amendment 80 sector, and Rockfish Program halibut PSC sideboard limits would continue to be calculated during the annual harvest specifications process as percentages of the GOA halibut PSC limit. However, because the annual trawl PSC limit would be reduced under this proposed action, the amount (in metric tons) of each of these management program's halibut PSC sideboard limit would also be reduced. Regulations that establish halibut PSC sideboard limits are at § 679.64(b)(4) for non-exempt AFA catcher vessels subject to GOA halibut PSC sideboard limits, § 679.92(b)(2) for the Amendment 80 sector, and § 679.82(e) for catcher/processors that opt-out of a Rockfish Program cooperative and are subject to GOA halibut PSC sideboard limits.

The Council considered but rejected an option to specify the sideboard limits in Federal regulation as a fixed limit in metric tons, rather than as percentages of the GOA trawl halibut PSC limit. The Council recommended that applying the sideboard limits as a percentage in Federal regulations would allow the proposed reductions to the annual trawl halibut PSC limit to carry through to those respective sideboard limits. Applying the current methodology prescribed in regulation for establishing halibut PSC sideboard limits against a lower trawl halibut PSC limit proportionately reduces the sideboard limits available to the AFA Program, Amendment 80 sector, and Rockfish Program. The Council and NMFS therefore determined that the proposed halibut PSC sideboard limit reductions minimize halibut bycatch to the extent practicable. Participants in the AFA Program, Amendment 80 sector, and the Rockfish Program have the ability to reduce halibut PSC use through halibut avoidance methods similar to those described above for other participants in the GOA trawl sector, including increased communication among industry participants, coordinated fishing activities and effort, and improved fishing technology (see section 4.6.4 of the Analysis for additional detail).

The following sections explain how the proposed halibut PSC sideboard limit reductions in this action would be applied to the AFA, Amendment 80, and Rockfish Programs. Additional detail on the potential impacts of the halibut PSC sideboard limits is available in section 4.3.2 of the Analysis. The examples provided in the following sections assume that the apportionments to the deep-water and shallow-water fishery categories and seasons specified in the final 2013 and 2014 harvest specifications for the GOA (78 FR 13162, February 26, 2013) are retained in future annual harvest specifications. If the Council recommends a different range of apportionments for those fishery categories, the actual amounts in the following examples would likewise change.

NMFS determined that these apportionments are appropriate for purposes of this action because they are consistent with the objective to apportion halibut PSC to ensure that it is available for use in groundfish fisheries earlier in the year (e.g., the trawl deep-water fisheries in the first season), but limits that use so that the halibut PSC limit remains to support other groundfish fisheries that occur later in the year (e.g., the trawl shallow-water fisheries in the fourth season). The limits assigned to each season reflect that halibut PSC likely to be taken during specific seasons by specific fisheries. This approach is consistent with the FMP and regulations at § 679.21(d)(5), which require that the Council and NMFS consider a number of factors in seasonally apportioning halibut PSC limits (see ''*GOA Annual Halibut PSC Limits, Fishery Categories, and Seasonal Apportionments*'' section above). Any future changes to apportionments during the harvest specifications process would be evaluated consistent with § 679.21(d)(5). The following sections use 2014 as the first year of implementation of halibut PSC sideboard limit reductions.

*A. Amendment 80 Halibut PSC Sideboard Limit*

Table 8 provides estimates of the proposed annual, fishery category, and seasonal halibut PSC sideboard limit reductions for the Amendment 80 sector. The phased-in 15-percent reduction in the deep-water fishery would result in a 61 mt annual reduction in the halibut PSC sideboard limit, from 418 mt in 2013, to 357 mt in 2016 and each year thereafter. The same reduction in the shallow-water fishery sideboard limits would result in a 20 mt annual reduction in the halibut PSC sideboard limit, from 137 mt in 2013, to 117 mt in 2016 and each year thereafter.

TABLE 8—PROPOSED HALIBUT PSC SIDEBOARD LIMITS FOR THE AMENDMENT 80 SECTOR

| Amendment 80 sideboard limits | Total sideboard limit | 1st season January 20 to April 1 | 2nd season April 1 to July 1 | 3rd season July 1 to September 1 | 4th season September 1 to October 1 | 5th season October 1 through December 31 |
|---|---|---|---|---|---|---|
| Deep-water species fishery: | | | | | | |
| 2013 (Status Quo) | 418 | 23 | 214 | 104 | 3 | 74 |
| 2014 (7% Reduction) | 387 | 21 | 198 | 96 | 3 | 69 |
| 2015 (12% Reduction) | 368 | 20 | 189 | 92 | 2 | 65 |
| 2016 and each year thereafter (15% Reduction) | 357 | 20 | 183 | 89 | 2 | 63 |
| Shallow-water species fishery: | | | | | | |
| 2013 (Status Quo) | 137 | 10 | 38 | 29 | 15 | 45 |
| 2014 (7% Reduction) | 127 | 9 | 35 | 27 | 14 | 42 |
| 2015 (12% Reduction) | 120 | 8 | 33 | 26 | 13 | 40 |
| 2016 and each year thereafter (15% Reduction) | 117 | 8 | 32 | 25 | 13 | 39 |

Amendment 80 vessels subject to the halibut PSC sideboard limits are most active in the deep-water fishery, where they primarily fish for arrowtooth flounder, rex sole, and rockfish. The third season has the largest number of participating Amendment 80 vessels, because that is the season most vessels fish in the rockfish fishery. Participation in the shallow-water fisheries by Amendment 80 vessels is much smaller, with only one to three vessels targeting these fisheries. Historical data indicates that only during the third season of the 2008 deep-water species fishery did halibut PSC sideboard limit use exceed 89 mt, which, according to Table 8, is the amount available under the 15-percent proposed reduction of the halibut PSC limit. That year was the first year of the Amendment 80 Program and the most active year for Amendment 80 vessels in the GOA. The Amendment 80 sector is expected to have a sufficient deep-water fishery halibut PSC limit to harvest rockfish in the third season. Under this proposed action, the decision of when to fish for groundfish under the halibut PSC limit remains with the Amendment 80 sector as it continues to monitor its halibut PSC under its existing cooperative agreements.

*B. Rockfish Program Catcher/Processor Opt-Out Sideboard Limits*

Table 9 shows the proposed July Rockfish Program catcher/processor halibut PSC sideboard limit reductions for those catcher/processors that choose to opt-out of participating in a Rockfish Program cooperative. These sideboard limits are separate and distinct from the Rockfish Program halibut PSC limit apportionment of 191.4 mt. The proposed phased-in 15-percent reduction would result in a 7 mt reduction for the deep-water fishery Rockfish Program catcher/processor opt-out halibut PSC sideboard limit, from 50 mt in 2013, to 43 mt in 2016 and each year thereafter. The shallow-water fishery Rockfish Program catcher/processor opt-out halibut PSC sideboard limit would remain at 2 mt during the 3 years of phased-in reductions. The reason that the shallow-water fishery PSC sideboard limit would not change is due to the fact that regulations establish the sideboard limit as 0.1 percent of the annual trawl halibut PSC limit (see regulations at § 679.84(e)). Once a 15-percent reduction is applied the resulting amount does not change due to rounding to the nearest metric ton.

TABLE 9—PROPOSED ROCKFISH PROGRAM CATCHER/PROCESSOR HALIBUT PSC SIDEBOARD LIMITS FOR JULY

[Values are in metric tons]

| Rockfish sideboard limits | July sideboard limits | |
|---|---|---|
| | Deep-water species fishery | Shallow-water species fishery |
| 2013 (Status Quo) | 50 | 2 |
| 2014 (7% Reduction) | 46 | 2 |
| 2015 (12% Reduction) | 44 | 2 |
| 2016 and each year thereafter (15% Reduction) | 43 | 2 |

The Council and NMFS believe that these halibut PSC limit reductions minimize halibut bycatch to the extent practicable taken by catcher/processors choosing to opt-out of participating in a Rockfish Program cooperative. Any reduction from the current 50 mt sideboard limit for the Rockfish Program catcher/processor opt-out halibut PSC sideboard limit in the deep-water fishery will likely constrain the catcher/processors subject to the sideboard limit. During 2007, 2008, and 2009, halibut PSC by the catcher/processors in the Central GOA Rockfish Program would have exceeded the 50 mt halibut PSC sideboard limit. Given that the halibut PSC for the deep-water fishery exceeded the status quo halibut PSC sideboard limit in those three years, there is a high likelihood that the deep-water fishery would be constrained by the reduced halibut PSC sideboard limit during July, particularly as the halibut PSC sideboard limit is reduced. However, in more recent years the Rockfish Program halibut PSC sideboard limits have not been exceeded, as catcher/processors that have opted-out of joining a Rockfish Program cooperative have either changed their fishing practices or decreased their participation in the fisheries subject to these halibut PSC sideboard limits. The fleet's altered fishing practices and improved communications about halibut bycatch among vessels and managing companies have resulted in decreases in halibut bycatch.

*C. Non-Exempt AFA Catcher Vessel Halibut PSC Sideboard Limits*

The proposed 15-percent reduction to the trawl halibut PSC limit would proportionately reduce the halibut PSC sideboard limits established for non-exempt AFA catcher vessels during the annual harvest specifications process. Table 10 shows the proposed non-exempt AFA catcher vessel halibut PSC sideboard limit reductions. The total reduction, once applied to the deep-water fishery, would result in an 8 mt AFA halibut PSC sideboard limit reduction, from 56 mt in 2013, to 48 mt in 2016 and each year thereafter. The same 15-percent halibut PSC limit reduction applied to the shallow-water fishery would result in a 45 mt AFA halibut PSC sideboard limit reduction, from 306 mt in 2013, to 261 mt in 2016 and each year thereafter. The 15-percent halibut PSC limit reduction applied to the fifth season (undesignated by species fishery) would decrease 10 mt, from 62 mt in 2013, to 52 mt in 2016 and each year thereafter.

TABLE 10—NON-EXEMPT AFA CATCHER VESSEL HALIBUT PSC SIDEBOARD LIMITS

| Non-exempt AFA catcher vessel sideboard limits | Total sideboard | 1st season January 20 to April 1 | 2nd season April 1 to July 1 | 3rd season July 1 to September 1 | 4th season September 1 to October 1 | 5th season October 1 through December 31 |
|---|---|---|---|---|---|---|
| Deep-water species fishery: | | | | | | |
| 2013 (Status Quo) | 56 | 7 | 21 | 28 | 0 | ..... |
| 2014 (7% Reduction) | 50 | 6 | 19 | 25 | 0 | ..... |
| 2015 (12% Reduction) | 49 | 6 | 18 | 25 | 0 | ..... |
| 2016 and each year thereafter (15% Reduction) | 48 | 6 | 18 | 24 | 0 | ..... |
| Shallow-water species fishery: | | | | | | |
| 2013 (Status quo) | 306 | 153 | 34 | 68 | 51 | ..... |
| 2014 (7% Reduction) | 282 | 141 | 31 | 63 | 47 | ..... |
| 2015 (12% Reduction) | 270 | 135 | 30 | 60 | 45 | ..... |
| 2016 and each year thereafter (15% Reduction) | 261 | 130 | 29 | 58 | 44 | ..... |
| Undesignated by species fishery: | | | | | | |
| 2013 (Status quo) | 62 | ..... | ..... | ..... | ..... | 62 |
| 2014 (7% Reduction) | 57 | ..... | ..... | ..... | ..... | 57 |
| 2015 (12% Reduction) | 54 | ..... | ..... | ..... | ..... | 54 |
| 2016 and each year thereafter (15% Reduction) | 52 | ..... | ..... | ..... | ..... | 52 |

In recent years, non-exempt AFA catcher vessels have been the most active in the shallow-water fishery, with up to 10 vessels participating, particularly in the first, third, and fourth seasons. Participation in the deep-water fishery is more limited, with only two vessels targeting these fisheries in recent years. Only the deep-water fishery exceeded a current seasonal sideboard limit; this happened three times from 2003 through April 2012. For this reason, the proposed halibut PSC sideboard limit reductions are expected to minimally constrain the non-exempt AFA catcher vessels if current fishing practices continue. The reductions would still allow the vessels subject to these halibut PSC sideboard limits to continue to fish, rather than be subject to fishery closures due to reaching the decreased halibut PSC limits proposed by this action. Most of the participation in the shallow-water fishery occurs in the pollock and Pacific cod fisheries. The pollock fishery has relatively low halibut PSC use compared to other shallow-water fisheries. A large amount of the halibut PSC limit is apportioned to seasons when Pacific cod target fishery apportionments are issued, which attempts to match potential halibut bycatch needs with the amount of Pacific cod available. In addition, given that NMFS is authorized to roll over unused halibut PSC sideboard limits for the non-exempt AFA catcher vessel from season to season, the proposed reductions appear to pose little constraint for these deep-water or shallow-water fisheries. Thus, even with the application of the maximum percent reduction considered as part of this action (15 percent), the corresponding reductions to the non-exempt AFA halibut PSC sideboard limits would still allow the vessels subject to these sideboard limits to operate in the deep-water and shallow-water fisheries.

*Action 4: Adjusting the Accounting for Halibut PSC Sideboard Limits for Amendment 80 Vessels, and Halibut PSC Apportionments Used by Trawl Vessels From May 15 Through June 30*

This proposed action also includes two management measures that are intended to provide relief to trawl sectors that are constrained by current regulatory restrictions associated with halibut PSC sideboard limits and the segregation of trawl halibut PSC apportionments between the deep-water and shallow-water fisheries. These measures would (1) allow the Amendment 80 sector to roll over unused halibut PSC sideboard limits from one season to the next season, and (2) allow available trawl halibut PSC limit apportionments in the second season deep-water and shallow-water fisheries to be combined and made available for use in either fishery from May 15 through June 30. These management measures are meant to help maintain groundfish harvest while minimizing halibut bycatch by these sectors to the extent practicable. They also are meant to provide additional flexibility as an incentive to participate in fisheries at times of the year that may have lower halibut PSC rates relative to other times of the year. Both proposed measures are described in detail below.

*A. Allow the Amendment 80 Sector To Roll Over Unused Halibut PSC Sideboard Limits From One Season to the Next Season*

This management measure would allow the Amendment 80 sector to roll over unused halibut PSC sideboard limits from one season to the next season so that the Amendment 80 sector could maximize their groundfish catch by using their reduced halibut PSC sideboard limits more efficiently. Non-exempt AFA catcher vessels, Central GOA Rockfish Program vessels, and vessels not operating under sideboard limits already have this flexibility. Currently, NMFS monitors halibut PSC by species fishery and seasons. Regulations at § 679.92(b)(2) prevent Amendment 80 vessels from using more

halibut PSC sideboard limit than is available in each deep-water or shallow-water fishery and season. If the Amendment 80 deep-water or shallow-water seasonal halibut PSC sideboard limit is reached, then all directed fishing for all species in that fishery close in the GOA for that season. If an Amendment 80 seasonal halibut PSC sideboard limit is exceeded then the amount over the limit is deducted from the next season's halibut PSC sideboard limit. NMFS reopens a species fishery in the following season with the halibut PSC sideboard limit applicable for that season.

Allowing the Amendment 80 sector to roll over unused halibut PSC sideboard limits from one season to the next season may allow for an increased availability of halibut PSC sideboard limits in some seasons. Any unused seasonal deep-water or shallow-water fishery halibut PSC sideboard limit available to roll over to the next season would remain in the same fishery category to which the limit was originally assigned during the harvest specifications process. This would preclude such roll overs from affecting the overall halibut PSC limit seasonal apportionments that are established for the GOA trawl sector as whole.

Table 11 uses data that was presented in the Analysis from the 2009 through 2010 fishing years to provide an example of how this measure would have been applied to the Amendment 80 sector fisheries in those years. Table 11 indicates that 132 mt of deep-water fishery and 86 mt of shallow-water fishery halibut PSC sideboard limits would have been available to roll over during the 2010 fishing year under this proposed option. However, the amount of the sideboard limit available to roll over from season to season in future years would be reduced under this proposed rule with the proposed phase-in of halibut PSC limit reductions. Under the 15-percent halibut PSC limit reduction proposed in this action, the amount of halibut PSC sideboard limits established for the Amendment 80 sector that would have been available for roll over in 2010 decreases from 132 mt to 112 mt for the deep-water fishery.

TABLE 11—AMENDMENT 80 HALIBUT PSC SIDEBOARD LIMIT (mt) THAT WOULD HAVE BEEN AVAILABLE TO ROLL OVER TO THE NEXT SEASON UNDER THIS PROPOSED ACTION DURING THE 2009 AND 2010 FISHING YEARS

| | Total sideboard available to roll over | 1st season January 20 to April 1 | 2nd season April 1 to July 1 | 3rd season* July 1 to September 1 | 4th season September 1 to October 1 | 5th season October 1 through December 31 |
|---|---|---|---|---|---|---|
| Deep-water fishery | 2010 | | | | | |
| Status Quo | 132 | 13 | 52 | 64 | 3 | N/A |
| 7% Reduction | 123 | 12 | 48 | 60 | 3 | N/A |
| 12% Reduction | 116 | 11 | 46 | 57 | 3 | N/A |
| 15% Reduction | 112 | 11 | 44 | 55 | 3 | N/A |
| Shallow-water fishery | 2010 | | | | | |
| Status Quo | 86 | 9 | 33 | 29 | 15 | N/A |
| 7% Reduction | 80 | 8 | 30 | 27 | 14 | N/A |
| 12% Reduction | 75 | 8 | 29 | 26 | 13 | N/A |
| 15% Reduction | 73 | 8 | 28 | 25 | 13 | N/A |
| Deep-water fishery | 2009 | | | | | |
| Status Quo | 135 | 23 | 73 | 36 | 3 | N/A |
| 7% Reduction | 126 | 21 | 68 | 34 | 3 | N/A |
| 12% Reduction | 119 | 20 | 65 | 32 | 2 | N/A |
| 15% Reduction | 115 | 20 | 62 | 31 | 2 | N/A |
| Shallow-water fishery | 2009 | | | | | |
| Status Quo | 64 | 0 | 20 | 29 | 14 | N/A |
| 7% Reduction | 59 | 0 | 19 | 27 | 13 | N/A |
| 12% Reduction | 56 | 0 | 18 | 25 | 13 | N/A |
| 15% Reduction | 54 | 0 | 17 | 24 | 12 | N/A |

* Excludes Rockfish Program halibut PSC limit.

The ability to roll over unused halibut PSC limits from one season to the next season would likely benefit the Amendment 80 sector. This management measure offers the Amendment 80 sector the ability to more efficiently use its halibut PSC sideboard limit. The inability to roll over halibut PSC limits from one season to the next season currently may create an incentive for the Amendment 80 sector to incur more halibut PSC during a given season, absent the flexibility to roll over unused limits of the sector's halibut PSC sideboard limit apportionments to the next season. The Amendment 80 sector traditionally fishes early in the season until the entire halibut PSC limit is reached because all trawl sectors are competing with each other for groundfish while the halibut PSC limit is available, and other sectors' catch could cause the deep-water (primarily) or shallow-water halibut limit to be reached before the Amendment 80 sector reaches its halibut PSC sideboard limit. The Amendment 80 sector's current inability to roll over unused halibut PSC, and the race to catch as much of their groundfish halibut PSC sideboard limit and non-sideboarded flatfish species as possible may create economic incentives that do not allow the best use of their halibut PSC sideboards. A rollover provision may help provide positive incentives to maximize Amendment 80 sector groundfish harvests with available halibut PSC. The Council included this management measure to the flexibility of proposed Measure 1 to provide the Amendment

80 sector with the ability to respond more efficiently to the proposed halibut PSC limit reductions in this proposed rule and other recent changes in GOA groundfish management. These changes include the regulations implementing Amendment 83 to establish GOA Pacific cod sector allocations, and the Central GOA Rockfish Program. The ability to roll over seasonal halibut PSC would provide the Amendment 80 sector with the opportunity to take advantage of available halibut PSC sideboard limits later in the year if halibut PSC is avoided in previous seasons. The Amendment 80 sector could develop methods to avoid halibut PSC or modify its fishing patterns, which could result in more target groundfish catch.

However, the flexibility to roll over halibut PSC sideboard limits to subsequent seasons does not guarantee the halibut PSC limit will be available to the Amendment 80 sector for future seasons. Under this management measure, all sectors would continue to compete for groundfish while the overall trawl halibut PSC limit is available. Use of halibut PSC by other non-Amendment 80 trawl vessels could cause the deep-water or shallow-water fisheries halibut PSC limit to be reached. This would result in a closure for all trawl gear before the Amendment 80 sector reaches its halibut PSC sideboard limit. Also, it is possible that the Amendment 80 sector could reach its halibut PSC sideboard limit early in the year, which would reduce the amount of the halibut PSC sideboard limit available to roll over to the next season.

*B. Combine Management of the Deep-Water and Shallow-Water Halibut PSC Limits From May 15 to June 30 To Allow Available Trawl Halibut PSC Limit in the Second Season Deep-Water and Shallow-Water Fisheries To Be Made Available for Use in Either Fishery Category*

This management measure would allow all GOA trawl participants to access remaining halibut PSC limits in either the deep-water fishery or shallow-water fishery during the second season from May 15 through June 30. Currently, NMFS manages the deep-water and shallow-water fishery complexes separately in the second season by closing directed fishing for the deep-water and shallow-water fishery complexes when the respective second season fishery halibut PSC limit is reached. Once a particular fishery complex is closed, vessels may not directed fish for species in their respective deep-water or shallow-water fishery complex until the third season deep-water fishery halibut PSC limit becomes available on July 1.

Historically, the deep-water trawl fishery reached its second season halibut PSC limit in April. The shallow-water trawl fishery halibut PSC limit has remained untouched in the second season because members of the trawl sector have not targeted shallow-water complex species due to the low economic value of these species. Combining management of the deep-water and shallow-water halibut PSC limits from May 15 to June 30 would allow the trawl sector to use remaining second season halibut PSC limits in either fishery complex and would provide the trawl sector with greater opportunity to fully harvest TAC for more economically valuable species.

Under combined management of halibut PSC limits from May 15 through June 30, GOA trawl gear vessels could use halibut PSC limits that remain in the deep-water complex or shallow-water complex in either the deep-water or shallow-water fisheries. The second season would remain open under combined management as long as halibut PSC is available. Once the total second season halibut PSC limit is reached, NMFS would close all directed fishing for groundfish using trawl gear in the GOA until the third season deep-water fishery halibut PSC limit becomes available on July 1 (except Rockfish Program cooperative quota and vessels directed fishing for pollock using pelagic trawl gear, which are exempt from halibut PSC limit closure notices under existing regulations at § 679.21(d)(7)(i)). Closure notices would not be separately issued to deep-water or shallow-water fisheries, since they would be managed as a combined trawl halibut PSC limit from May 15 through June 30.

Halibut PSC sideboard limits for the Amendment 80 and AFA vessels would continue to be defined for deep-water and shallow-water fisheries in the second season. Since shallow-water flatfish is primarily targeted by catcher vessels, much of the benefit derived from this management measure would result if catcher vessels minimize their use of halibut PSC while fishing in the shallow-water fishery. For the trawl fleets to benefit from this measure it would be necessary for some amount of the shallow-water halibut PSC limit to remain in the second season. As currently allowed for other trawl sectors, if the Amendment 80 sector were allowed to roll over unused deep-water halibut PSC sideboard limit from the first season, as proposed above, then it also may benefit from this proposed change.

After the second season is complete, NMFS would re-specify halibut PSC limits for the third season, and would resume separate management of halibut PSC limits in the deep-water and shallow-water fishery complexes. NMFS would reduce the halibut PSC limit in the third season to account for any overage of the original apportionment of deep-water or shallow-water halibut PSC limits in the second season. An overage of the second season halibut PSC limit would decrease the halibut PSC limit available for the third season fisheries.

For example, the deep-water fishery could close in mid-April because it reached that fishery's second season halibut PSC apportionment. The shallow-water fishery may have 100 mt of halibut PSC limit remaining, which would be available for use by either the deep-water or shallow-water fishery beginning on May 15 under this management measure. In this case, the trawl sector could start fishing for deep-water species on May 15 and use the halibut PSC limit of 100 mt that was available from the shallow-water fishery's seasonal halibut PSC apportionment instead of waiting until July 1 for the third season deep-water fishery halibut PSC limit to become available. However, if the deep-water fishery used this extra amount, NMFS would issue an inseason action to reduce the third season deep-water fishery halibut PSC limit available on July 1 from 181 mt to 81 mt to account for the 100 mt used by that fishery during May 15 through June 30. This methodology would also apply to the shallow-water fishery's seasonal halibut PSC limit. This measure is not expected to result in closure of the third season deep-water or shallow-water fisheries based on the current halibut PSC seasonal apportionments. If there is unused second season halibut PSC limit available after June 30, then it would be rolled over to the same species fishery from which it was initially assigned (e.g., if 50 mt of halibut PSC derived from the shallow-water fishery remained after June 30, that 50 mt would be added to the amount available at the start of the third season shallow-water fishery halibut PSC limit).

The Council selected May 15 as the date to remove the deep-water and shallow-water restrictions in order to allow for a period without potential fishing effort. Historically, the second season deep-water fishery has closed during the third week in April. Delaying the re-opening of the deep-water fishery, even if some amount of the shallow-water halibut PSC limit was available for the deep-water fishery, may provide

two benefits. First, the groundfish species in the deep-water fishery could re-aggregate if they had dispersed during the beginning of the second season deep-water fishery. Second, Pacific halibut migrate to shallower waters during the spring and summer months. Thus, opening the deep-water fishery on May 15 may allow for greater groundfish catch per unit of fishing effort (i.e., increased fishing efficiency for target species), as well as potentially decreasing halibut bycatch (since there has been additional time for halibut to move into shallower waters).

The flexibility created from this management measure could potentially provide sectors with the ability to reduce halibut PSC rates by fishing at times of the year when halibut PSC rates are lower and the halibut PSC limit has not typically been available. Allowing fishing during times of lower halibut PSC rates would provide the trawl sector with greater opportunity to access groundfish TACs despite the reduction in halibut PSC limits. Also, allowing shallow-water fishery halibut PSC limits to be used in the deep-water fishery after May 15 each year during the second season should extend the deep-water fishery during that season. Increasing the overall amount of deep-water fishery halibut PSC limit available may extend fishing for arrowtooth flounder and rex sole for both catcher vessels and catcher/processors.

The Council considered but rejected an option to account for halibut PSC from May 15 through June 30 by deducting the halibut PSC from the fishery category where it was initially available. The Council rejected this option because NMFS would have been required to revise its catch accounting system, and those revisions could have resulted in substantial costs to NMFS. Measure 2 as recommended by the Council, and proposed in this rule, would not require substantial revisions to NMFS' catch accounting system to re-specify halibut PSC limits.

**Summary of Regulatory Changes**

This action proposes the following changes to the existing regulatory text at 50 CFR part 679:

- Revise § 679.21, prohibited species bycatch management, to incorporate explicit annual GOA halibut PSC limits for the trawl and hook-and-line fisheries, add the incremental reduction of the annual PSC limit over a 3-year period, and provide NMFS the ability to re-specify halibut PSC limits in the second season deep-water and shallow-water species fishery categories to aggregate available halibut PSC limits for use in either fishery.
- Revise § 679.92, Amendment 80 Program halibut PSC use caps and sideboard limits, to remove restrictions on the roll over of seasonal halibut PSC sideboard limits from one season to the next season.
- Revise Table 38 to 50 CFR part 679 to incorporate in this table the seasonal halibut PSC sideboard limit roll over provisions made in § 679.92.

**Classification**

Pursuant to section 304(b) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for the purposes of Executive Order (E.O.) 12866.

*Initial Regulatory Flexibility Analysis*

An Initial Regulatory Flexibility Analysis (IRFA) was prepared for this action, as required by section 603 of the Regulatory Flexibility Act. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. The IRFA describes the reasons why this action is being proposed; the objectives and legal basis for the proposed rule; the number of small entities to which the proposed rule would apply; any projected reporting, recordkeeping, or other compliance requirements of the proposed rule; any overlapping, duplicative, or conflicting Federal rules; impacts of the action on small entities; and any significant alternatives to the proposed rule that would accomplish the stated objectives of the Magnuson-Stevens Act, and any other applicable statutes, and would minimize any significant adverse impacts of the proposed rule on small entities. Descriptions of the proposed action, its purpose, and the legal basis are contained earlier in this preamble and are not repeated here. A summary of the IRFA follows. A copy of the IRFA is available from NMFS (see **ADDRESSES**).

On June 20, 2013, the Small Business Administration (SBA) issued a final rule revising the small business size standards for several industries effective July 22, 2013. 78 FR 37398 (June 20, 2013). The rule increased the size standard for Finfish Fishing from $4.0 to 19.0 million, Shellfish Fishing from $4.0 to 5.0 million, and Other Marine Fishing from $4.0 to 7.0 million. Id. at 37400 (Table 1). The new size standards were used to prepare the IRFA for this action.

**Number and Description of Small Entities Directly Regulated by the Proposed Action**

The entities directly regulated by this proposed action are those entities that participate in harvesting groundfish from the Federal or parallel groundfish fisheries of the GOA with trawl gear or hook-and-line gear (excluding sablefish). These directly regulated entities include the groundfish catcher vessels and groundfish catcher/processor vessels active in the GOA. Also considered directly regulated are those entities with halibut PSC sideboard limits, which include non-exempt AFA catcher vessels that operate in AFA inshore cooperatives, catcher/processors operating in Amendment 80 cooperatives, and catcher/processors operating in Central GOA Rockfish Program cooperatives. Fishing vessels are considered small entities if their total annual gross receipts, from all their activities combined, are less than $19.0 million. The IRFA estimates the number of harvesting vessels that are considered small entities, but these estimates may overstate the number of small entities because (1) some vessels may also be active as tender vessels in the salmon fishery, fish in areas other than Alaska and the West Coast, or generate revenue from other non-fishing sources; and (2) all affiliations are not taken into account, especially if the vessel has affiliations not tracked in available data (i.e., ownership of multiple vessel or affiliation with processors) and may be misclassified as a small entity. The Analysis for this proposed action identified an estimated 486 total vessels considered directly regulated small entities in 2012, the most recent year of available data on the size of regulated entities.

There are 65 Western Alaska communities that work through six non-profit Community Development Quota (CDQ) groups that are considered small entities for Regulatory Flexibility Act purposes. The CDQ groups' ownership of harvesting vessels that operate in the GOA means that some of the CDQ groups' activities could be directly regulated in the same manner as other small entities that own vessels harvesting groundfish in the GOA.

The AFA, Amendment 80, and Central GOA Rockfish fisheries cooperatives receive sideboard limits of halibut PSC and are therefore, directly regulated. These cooperative entities are structured to increase the joint profits to their members. In 2012, there were seven inshore AFA cooperatives, two Amendment 80 cooperatives, and two Central GOA Rockfish cooperatives that

are considered large entities for this proposed action.

**Impacts of the Action on Small Entities**

This proposed rule is meant to reduce halibut PSC mortality by decreasing halibut PSC limits available for use in the GOA groundfish fisheries. Publishing the halibut PSC limits in Federal regulation would reduce regulatory uncertainty as to what the final halibut PSC limit would be each year and may benefit small entities as they plan their annual fishing strategy. Any reductions in harvest by groundfish harvesters would impact revenue generated from the GOA groundfish fisheries. The small entities regulated under this proposed action may or may not be constrained by the halibut PSC limit and generate less revenue than under the status quo alternative, depending on the halibut PSC used in the groundfish fisheries each year. The GOA trawl and hook-and-line vessels regulated by this action would need to use their halibut PSC limits more efficiently to mitigate the impacts of this proposed action. The extent to which the regulated fleets are successful in limiting halibut PSC use in the near and longer terms will determine the constraints this proposed action has on small entities. Given variations in the amount of available groundfish resources on an annual basis, and the amount of halibut PSC that may be used harvesting these resources, the impacts of the alternatives are assessed relative to historic rates of halibut PSC use.

**Description of Significant Alternatives Considered**

The Council considered an extensive series of alternatives, options, and suboptions to reduce halibut PSC limits in the GOA, including the ''no action'' alternative. The RIR presents the complete set of alternatives (see **ADDRESSES**). Alternative 1 is Status Quo/No Action alternative, which would retain the process of changing GOA halibut PSC limits through the annual groundfish harvest specification process. Alternative 2 would amend the FMP to remove setting GOA halibut PSC limits from the annual harvest specification process and instead establish the limits in Federal regulation. Alternative 2 includes two options. Option 1, Status Quo/No Action would retain the existing 1,973 mt trawl and 300 mt hook-and-line gear halibut PSC limits provided in the final 2013 and 2014 annual harvest specifications for the GOA and place them in Federal regulation. Option 2 would revise the current GOA halibut PSC limits and write the new limits into Federal regulation. Alternative 2, Option 2, contained a number of suboptions for the amount of halibut PSC limit reduction by trawl and the hook-and-line fisheries, and additional measures. Other significant alternatives to the proposed rule that were considered are discussed in Section 2.1.4 of the Analysis. The preferred alternative includes a suite of options and suboptions that considered a range of different halibut PSC limit reductions and modifications to halibut PSC sideboard limit management (Alternative 3).

All of the alternatives and options that were considered, other than the Status Quo, including the Council's preferred alternative, would implement the halibut PSC limits through Federal regulation to reduce uncertainty about the final annual halibut PSC limit, which may benefit small entities. Based on the best available scientific data and information, none of the alternatives to the preferred alternative appear to have the potential to accomplish the stated objectives of the Magnuson-Stevens Act and other applicable statutes (as reflected in the proposed action), while minimizing any significant adverse economic impact on small entities beyond those achieved under the proposed action. The proposed action would minimize bycatch to the extent practicable while providing mechanisms to reduce the impacts on small entities in the GOA groundfish fisheries by phasing-in reductions to these halibut PSC limit reduction measures over several years and establishing other measures described in this proposed rule to ensure more efficient use of the available halibut PSC limits.

**Recordkeeping and Recording Requirements**

This action does not modify recordkeeping or reporting requirements. Federal Rules that may Duplicate, Overlap, or Conflict with the Proposed Action.

The Analysis did not reveal any Federal rules that duplicate, overlap, or conflict with the proposed action.

**List of Subjects in 50 CFR Part 679**

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: September 9, 2013.

**Alan D. Risenhoover,**

*Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

## PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for part 679 continues to read as follows:

**Authority:** 16 U.S.C. 773 *et seq.,* 1801 *et seq.,* 3631 *et seq.;* and Pub. L. 108–447.

■ 2. In § 679.21,

■ a. Remove paragraph (d)(2);

■ b. Redesignate paragraphs according to the following table;

| Redesignate paragraph | As paragraph |
|---|---|
| (d)(4) | (d)(2) |
| (d)(5) | (d)(4) |
| (d)(6) | (d)(5) |
| (d)(7) | (d)(6) |
| (d)(8) | (d)(7) |

■ c. Revise newly redesignated paragraphs (d)(2) (d)(4)(iii)(C) and (d)(6)(ii);

■ d. Revise paragraphs (d)(1), (d)(3) heading, (d)(3)(i), (d)(3)(ii); and

■ e. Add paragraph (d)(4)(iii)(D) to read as follows:

**§ 679.21 Prohibited species bycatch management.**

* * * * *

(d) * * *

(1) *Notification and public comment*—(i) *Proposed and final apportionments.* NMFS will publish in the **Federal Register** proposed and final apportionments of the halibut PSC limits in paragraphs (d)(2) and (3) of this section in the notification required under § 679.20.

(ii) *Modification of apportionments.* NMFS, by notification in the **Federal Register**, may change the halibut PSC apportionments during the year for which they were specified, based on new information of the types set forth in this paragraph (d).

(iii) *Public comment.* NMFS will accept public comment on the proposed halibut PSC apportionments for a period specified in the notice of proposed halibut PSC apportionments published in the **Federal Register**. NMFS will consider comments received on proposed halibut PSC apportionments and, after consultation with the Council, will publish notification in the **Federal**

**Register** specifying the final halibut PSC apportionments.

(2) *Hook-and-line gear and pot gear annual halibut PSC limit.* (i) The annual total PSC limit of halibut caught while conducting any hook-and-line gear fishery for groundfish in the GOA is an amount of halibut equivalent to the amount of halibut mortality established for each of the fishery categories in paragraphs (d)(2)(i)(A) and (B) of this section. The notification at paragraph (d)(1) of this section also may specify a halibut PSC limit for the pot gear fisheries.

(A) *Demersal shelf rockfish, Southeast Outside (SEO) District.* The halibut PSC limit in the demersal shelf rockfish fishery in the SEO District is 9 mt.

(B) *Other hook-and-line fishery.* The halibut PSC limit in the other hook-and-line gear fishery is established according to the provisions of paragraphs (d)(2)(iii) and (d)(2)(iv) of this section.

(ii) *Hook-and-line fishery categories.* For purposes of apportioning the hook-and-line halibut PSC limit among fisheries, the following fishery categories are specified and defined in terms of round-weight equivalents of those GOA groundfish species for which a TAC has been specified under § 679.20.

(A) *Demersal shelf rockfish, SEO District.* Fishing with hook-and-line gear in the SEO District of the Eastern GOA regulatory area during any weekly reporting period that results in a retained catch of demersal shelf rockfish that is greater than the retained amount of any other fishery category defined under this paragraph (d)(2)(ii).

(B) *Other hook-and-line fishery.* Fishing with hook-and-line gear during any weekly reporting period that results in a retained catch of groundfish and is not a demersal shelf rockfish fishery defined under paragraph (d)(2)(ii)(A) of this section.

(iii) Apportionment of the GOA halibut PSC limit among other hook-and-line catcher vessels and catcher/processors.

(A) Catcher vessels using hook-and-line gear in the other hook-and-line fishery will be apportioned part of the GOA halibut PSC limit in proportion to the total Western and Central GOA Pacific cod allocations, where X is equal to annual TAC, as follows:

$$290\ mt * \frac{(1.4\%(X_{WGOA}) + 21.3\%(X_{CGOA}))}{((19.8\% + 1.4\%)(X_{WGOA}) + ((5.1\% + 21.3\%)(X_{CGOA})}$$

(B) Catcher/processors using hook-and-line gear in the other hook-and-line fishery will be apportioned part of the GOA halibut PSC limit in proportion to the total Western and Central GOA Pacific cod allocations, where X is equal to annual TAC, as follows:

$$290\ mt * \frac{(19.8\%(X_{WGOA}) + 5.1\%(X_{CGOA}))}{((19.8\% + 1.4\%)(X_{WGOA}) + ((5.1\% + 21.3\%)(X_{CGOA})}$$

(C) No later than November 1, any halibut PSC limit allocated under paragraph (d)(2)(ii)(B) of this section not projected by the Regional Administrator to be used by one of the hook-and-line sectors during the remainder of the fishing year will be made available to the other sector.

(iv) *Other hook-and-line fishery annual PSC limit reductions.* The annual halibut PSC limits established for the other hook-and-line fishery under paragraph (d)(2)(iii) of this section are reduced, as follows:

| Vessel category | Annual PSC limit percent reduction from the annual halibut PSC limit established under paragraph (d)(2)(iii) of this section (percent) | Effective years |
|---|---|---|
| (A) Catcher vessel | 7 | 2014. |
| | 12 | 2015. |
| | 15 | 2016 and each year thereafter. |
| (B) Catcher/processor | 7 | 2014 and each year thereafter. |

(3) *Trawl gear annual halibut PSC limit.* (i) The annual total PSC limit of halibut caught while conducting any trawl gear fishery for groundfish in the GOA is an amount of halibut equivalent to 1,973 mt of halibut mortality. This amount is reduced as follows:

| Percent reduction from 1,973 mt | Annual trawl gear PSC limit (mt) [1] | Effective years |
|---|---|---|
| 7 | 1,848 | 2014. |
| 12 | 1,759 | 2015. |

| Percent reduction from 1,973 mt | Annual trawl gear PSC limit (mt) [1] | Effective years |
|---|---|---|
| 15 | 1,705 | 2016 and each year thereafter. |

[1] This amount maintains the 191 mt annual allocation to the Rockfish Program (see Table 28d to this part) from the 1,973 mt halibut PSC limit, while reducing the remainder of the annual trawl gear halibut PSC limit by the percentage listed in the first column.

(ii) *PSC allowance.* The halibut PSC limit specified for vessels using trawl gear may be further apportioned as PSC allowances to the fishery categories listed in paragraph (d)(3)(iii) of this section, based on each category's proportional share of the anticipated halibut PSC mortality during a fishing year and the need to optimize the amount of total groundfish harvest under the halibut PSC limit. The sum of all PSC allowances will equal the halibut PSC limit established under paragraph (d)(3)(i) of this section.

* * * * *

(4) * * *

(iii) * * *

(C) The amount of unused halibut PSC not reapportioned under the provisions described in § 679.21(d)(4)(iii)(B) will not be available for use as halibut PSC by any person for the remainder of that calendar year.

(D) *Combined management of trawl halibut PSC limits from May 15 through June 30.* NMFS will combine management of available trawl halibut PSC limits in the second season deep-water and shallow-water species fishery categories for use in either fishery from May 15 through June 30 during the current fishery year. Halibut PSC sideboard limits for the Amendment 80 and AFA sectors will continue to be defined as deep-water and shallow-water species fisheries from May 15 through June 30. NMFS will re-apportion the halibut PSC limit between the deep-water and shallow-water species fisheries after June 30 to account for actual halibut PSC use by each fishery category during May 15 through June 30. The Regional Administrator will issue a **Federal Register** notice to reapportion the amounts of trawl halibut PSC to each species fishery category.

* * * * *

(6) * * *

(ii) *Hook-and-line fisheries.* If, during the fishing year, the Regional Administrator determines that U.S. fishing vessels participating in any of the three hook-and-line gear and operational type fishery categories listed under paragraph (d)(2) of this section will catch the halibut PSC allowance, or apportionments thereof, specified for that fishery category under paragraph (d)(1) of this section, NMFS will publish notification in the **Federal Register** closing the entire GOA or the applicable regulatory area, district, or operation type to directed fishing with hook-and-line gear for each species and/or species group that composes that fishing category.

* * * * *

■ 3. In § 679.92, revise paragraph (b)(2) to read as follows:

**§ 679.92 Amendment 80 Program use caps and sideboard limits.**

* * * * *

(b) * * *

(2) *GOA halibut PSC sideboard limits.* All Amendment 80 vessels, other than the fishing vessel GOLDEN FLEECE as specified in paragraph (d) of this section, may not use halibut PSC in the fishery categories and management areas, greater than the amounts specified in Table 38 to this part during January 1 through December 31 of each year. Any residual amount of a seasonal sideboard halibut PSC limit may carry forward to the next season limit. This restriction on halibut PSC usage does not apply to the following two exceptions:

* * * * *

■ 4. Revise Table 38 to 50 CFR part 679 to read as follows:

TABLE 38 TO PART 679—GOA AMENDMENT 80 SIDEBOARD LIMIT FOR HALIBUT PSC FOR THE AMENDMENT 80 SECTOR

| In the . . . | The maximum percentage of the total GOA halibut PSC limit that may be used by all Amendment 80 qualified vessels subject to the halibut PSC sideboard limit as those seasons [1] are established in the annual harvest specifications is . . . | | | | |
|---|---|---|---|---|---|
| | Season 1 (percent) | Season 2 (percent) | Season 3 (percent) | Season 4 (percent) | Season 5 (percent) |
| Shallow-water species fishery as defined in § 679.21(d)(3)(iii)(A) in the GOA or adjacent waters open by the State of Alaska for which it adopts a Federal fishing season | 0.48 | 1.89 | 1.46 | 0.74 | 2.27 |
| Deep-water species fishery as defined in § 679.21(d)(3)(iii)(B) in the GOA or adjacent waters open by the State of Alaska for which it adopts a Federal fishing season | 1.15 | 10.72 | 5.21 | 0.14 | 3.71 |

[1] Any residual amount of a seasonal sideboard halibut PSC limit may carry forward to the next season limit (see § 679.92(b)(2)).

[FR Doc. 2013–22362 Filed 9–16–13; 8:45 am]

BILLING CODE 3510–22–P

# Notices

Federal Register

Vol. 78, No. 180

Tuesday, September 17, 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

### Food and Nutrition Service

### Agency Information Collection Activities: Proposed Collection; Comment Request Supplemental Nutrition Assistance Program: Form FNS–46, Issuance Reconciliation

**AGENCY:** Food and Nutrition Service (FNS), USDA.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Food and Nutrition Service (FNS) is publishing for public comment a summary of a proposed information collection. This is a revision of a currently approved collection for form FNS–46, Issuance Reconciliation Report, which concerns benefit issuance operations in the Supplemental Nutrition Assistance Program (SNAP). The form will be modified and simplified. FNS plans to update the form FNS–46, to capture Disaster Supplemental Nutrition Assistance Program (D–SNAP) benefit issuances and returns data. This form update will ensure D–SNAP data will be more readily available, enabling FNS to respond to requests from multiple agencies on contributions to Federal disaster relief efforts. The form will be simplified since it no longer captures coupon issuances and returns. (Food stamp coupons were deobligated in 2009.) Instead it will summarize Electronic Benefit Transfer (EBT) issuances and returns.

**DATES:** Written comments must be received on or before November 18, 2013.

**ADDRESSES:** Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology.

Comments may be sent to Shanta Swezy, Chief, Retailer Management and Issuance Branch, Retailer Policy and Management Division, Food and Nutrition Service, U. S. Department of Agriculture, 3101 Park Center Drive, Room 426, Alexandria, VA 22302. Comments may also be faxed to the attention of Ms. Swezy at (703) 305–1863; or via email to: *shanta.swezy@fns.usda.gov.* Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov* and follow the online instructions for submitting comments electronically.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of this information collection should be directed to Ms. Elvira May, Program Analyst, Retailer Management and Issuance Branch at (703) 605–1534.

**SUPPLEMENTARY INFORMATION:**

*Title:* Supplemental Nutrition Assistance Program: Form FNS–46, Issuance Reconciliation.

*Form Number:* FNS–46.

*OMB Number:* 0584–0080.

*Expiration Date:* March 31, 2014.

*Type of Request:* Revision of a currently approved collection.

*Abstract:* Section 7(d) of the Food and Nutrition Act of 2008, as amended, (the Act) (7 U.S.C. 2016(d)), requires State agencies to report on their SNAP benefit issuance operations not less than monthly. Section 11(a) of the Act (7 U.S.C. 2020(a)) requires State agencies to assume responsibility for the issuance, control and accountability of SNAP benefits.

Regulations at 7 CFR 274.4(a) and 274.4(b)(2) require State agencies to account for all issuance through the reconciliation process and to submit a report on this process using Form FNS–46, Issuance Reconciliation Report. These reports must be submitted to the Food and Nutrition Service (FNS) monthly and must reach FNS no later than 90 days following the end of each report month. The FNS–46 report reflects the total issuance, returns and unauthorized issuance amounts resulting in the net Federal obligation.

Disaster assistance through SNAP is authorized by sections 402 and 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) and the temporary emergency provisions contained in Section 5 of the Food and Nutrition Act of 2008, and in 7 CFR Part 280 of the SNAP regulations. In accordance with 7 CFR 274.4, State agencies shall keep records and report SNAP participation and issuance totals to FNS.

Historically, form FNS–292B, Report of Disaster Supplemental Nutrition Assistance Program Benefit Issuance, has been used by SNAP State agencies to report to FNS, the number of households and persons who were certified for the Disaster SNAP, and also to report the value of benefits issued to those households. Form FNS–292B must be submitted to the agency within 45 days following termination of disaster assistance.

The information collection burden for the FNS–292B, is included in OMB 0584–0037, expiration date July 31, 2014. However, recent evaluation of Federal disaster response efforts has identified a critical need for timely periodic reporting while a disaster response is ongoing. Updating the FNS–46, to include separate reporting of D–SNAP benefit issuance and participation will ensure estimates are available on a monthly basis. Requiring monthly D–SNAP estimates on the FNS–46, will not duplicate any data collection currently in place, as the FNS–292B, serves as a final summary and closeout of the disaster response and is not meant to provide periodic updates.

The update to form FNS–46, is occurring in coordination with an update to form FNS–388, State Issuance and Participation Estimates (OMB 0584–0081, expiration date July 31, 2016). The alignment of these two forms will ensure that the monthly D–SNAP issuances and returns collected on the FNS–46, will have associated and

corresponding final issuance reconciliations on the FNS–388.

While we are adding D–SNAP estimates on the FNS–46, we are removing the reporting requirement of paper coupons. Therefore, FNS estimates the burden hours associated with completing the FNS–46 will remain at 4 hours.

*Affected Public:* State, Local and Tribal Government.

*Estimated Number of Respondents:* 54.

*Estimated Annual Number of Responses per Respondent:* 12.

*Estimated Total Annual Responses:* 648.

*Estimated Time per Response:* 4.0 hours.

*Estimated Total Annual Burden:* 2592 hours annually.

Dated: September 10, 2013.

**Jeffrey J. Tribiano,**

*Acting Administrator, Food and Nutrition Service.*

[FR Doc. 2013–22572 Filed 9–16–13; 8:45 am]

**BILLING CODE 3410–30–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Forest Resource Coordinating Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Forest Resource Coordinating Committee Meeting will meet in Rosslyn, Virginia. The Committee is authorized under Section 8005 of the Food, Conservation, and Energy Act of 2008 (the Act) (Pub. L. 110–246). The purpose of the Committee is to provide direction and coordination of actions within the Department of Agriculture, and coordination with State agencies and the private sector, to effectively address the national priorities for non-industrial private forest land. The purpose of this meeting is to develop recommendations to submit to the Secretary regarding alignment of landowner assistance delivery systems, forest inventory and analysis, markets, climate change adaptation, forest conditions, threats to forest health, and landscape scale conservation and management. The meeting is open to the public.

**DATES:** The meeting will be held on October 17–18, 2013 from 8:30 a.m. to 5:00 p.m. All meetings are subject to change or cancellation.

**ADDRESSES:** The meeting will be held at the USDA Forest Service, 1621 North Kent Street, Conference Room 703/704, Arlington, Virginia. Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received on the Forest Resource Coordinating Committee Web site at *http://www.fs.fed.us/spf/coop/frcc/.* Visitors are encouraged to call ahead to 202–205–1043 to facilitate entry into the meeting room.

**FOR FURTHER INFORMATION CONTACT:** Maya Solomon, Forest Resource Coordinating Committee Program Coordinator, Cooperative Forestry Staff, 202–205–1376 or Ted Beauvais, Forest Resource Coordinating Committee Designated Federal Officer, Cooperative Forestry Staff, 202–205–1190. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** Additional information on the Forest Resource Coordinating Committee can be found by visiting the Committee's Web site at: *http://www.fs.fed.us/spf/coop/frcc/.* Anyone who would like to bring related matters to the attention of the Committee may file written statements with the Committee staff by October 10, 2013. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing within one week of each scheduled meeting to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to Maya Solomon, Forest Resource Coordinating Committee Program Coordinator at 1400 Independence Ave. SW., mailstop 1123, Washington, DC 20250; by email to *mayasolomon@fs.fed.us.* A summary of the meeting will be posted at *http://www.fs.fed.us/spf/coop/frcc* within 21 days after the meeting.

*Meeting Accommodations:* If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodations for access to the facility or proceedings by contacting the person listed under the For Further Information Contact. All reasonable accommodation requests are managed on a case by case basis.

Dated: September 10, 2013.

**Paul Ries,**

*Associate Deputy Chief.*

[FR Doc. 2013–22525 Filed 9–16–13; 8:45 am]

**BILLING CODE 3410–11–P**

## DEPARTMENT OF COMMERCE

### Census Bureau

### Census Advisory Committees; Meetings

**AGENCY:** Bureau of the Census, Department of Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Bureau of the Census (Census Bureau) is giving notice of a meeting, the National Advisory Committee on Racial, Ethnic, and Other Populations (NAC). The Committee will address census policies, research and methodology, tests, operations, communications/messaging and other activities to ascertain needs and best practices to improve censuses, surveys, operations and programs. The NAC will meet in a plenary session on October 17–18, 2013. Last-minute changes to the schedule are possible, which could prevent giving advance public notice of schedule adjustments.

**DATES:** October 17–18, 2013. On October 17, the meeting will begin at approximately 8:30 a.m. and end at approximately 5:00 p.m. On October 18, the meeting will begin at approximately 8:30 a.m. and end at approximately 1:45 p.m.

**ADDRESSES:** The meeting will be held at the U.S. Census Bureau, 4600 Silver Hill Road, Suitland, Maryland 20746.

**FOR FURTHER INFORMATION CONTACT:** Jeri Green, *Jeri.Green@census.gov,* Committee Liaison Officer, Department of Commerce, U.S. Census Bureau, Room 8H182, 4600 Silver Hill Road, Washington, DC 20233, telephone 301–763–6590. For TTY callers, please use the Federal Relay Service 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:** The NAC comprises up to thirty-two members. The Committee provides an organized and continuing channel of communication between race, ethnic, and other populations and the Census Bureau. The Committee will advise the Director of the Census Bureau on the full range of economic, housing, demographic, socioeconomic, linguistic, technological, methodological, geographic, behavioral and operational variables affecting the cost, accuracy and implementation of Census Bureau

programs and surveys, including the decennial census.

The Committee also assists the Census Bureau on ways that census data can best be disseminated to diverse race and ethnic populations and other users. The Committee is established in accordance with the Federal Advisory Committee Act (Title 5, United States Code, Appendix 2, Section 10(a)(b)).

All meetings are open to the public. A brief period will be set aside at the meeting for public comment on October 18, 2013. However, individuals with extensive questions or statements must submit them in writing to Ms. Green at least three days before the meeting. If you plan to attend the meeting, please register by Monday, October 14, 2013. You may access the online registration from with the following link: *http://www.regonline.com/nac_oct2013_meeting.* Seating is available to the public on a first-come, first-served basis.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Committee Liaison Officer as soon as possible, preferably two weeks prior to the meeting.

Due to increased security and for access to the meeting, please call 301–763–9906 upon arrival at the Census Bureau on the day of the meeting. A photo ID must be presented in order to receive your visitor's badge. Visitors are not allowed beyond the first floor.

Dated: July 9, 2013.

**John H. Thompson,**

*Director, Bureau of the Census.*

[FR Doc. 2013–22535 Filed 9–16–13; 8:45 am]

BILLING CODE 3510–07–P

## DEPARTMENT OF COMMERCE

### Economic Development Administration

### Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

**AGENCY:** Economic Development Administration, Department of Commerce.

**ACTION:** Notice and Opportunity for Public Comment.

Pursuant to Section 251 of the Trade Act 1974, as amended (19 U.S.C. 2341 et seq.), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of these firms contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[9/4/2013 through 9/11/2013]

| Firm name | Firm address | Date accepted for investigation | Product(s) |
|---|---|---|---|
| York Imperial Plastics, Inc ..... | 718 Country Road, York, PA 17403. | 9/9/2013 | The firm manufactures plastic injection molded component parts for the construction, industrial, agricultural and automotive markets. |
| Sakco Precision, Inc ..... | 3665 C St. NE., Auburn, WA 98002. | 9/5/2013 | The firm manufacturers aerospace parts; casting and heating titanium and other metals and machining of the cast and forged parts. |
| Unlimited Designs, Inc ..... | 780 North Warm Springs Road (700 West), Salt Lake City, UT 84116. | 9/10/2013 | The firm manufactures ornamental fiberglass architectural products for residential and commercial applications. |
| C–K Composites Company, LLC. | 361 Bridgeport Street, Mount Pleasant, PA 15666. | 9/11/2013 | The firm manufactures components comprised of densified wood and epoxide resin. |

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance for Firms Division, Room 71030, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Dated: September 11, 2013.

**Michael DeVillo,**

*Eligibility Examiner.*

[FR Doc. 2013–22543 Filed 9–16–13; 8:45 am]

BILLING CODE 3510–WH–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–475–818; A–489–805; C–475–819; C–489–806]**

### Certain Pasta From Italy and Turkey: Continuation of Antidumping and Countervailing Duty Orders

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** As a result of the determinations by the Department of Commerce (the Department) that revocation of the antidumping duty (AD) orders on certain pasta from Italy and Turkey would likely lead to continuation or recurrence of dumping, that revocation of the countervailing duty (CVD) orders on certain pasta from Italy and Turkey would likely lead to continuation or recurrence of a countervailable subsidy, and the determination by the International Trade Commission (the ITC) that revocation of these AD and CVD orders would likely lead to a continuation or recurrence of material injury to an industry in the United States, the Department is publishing this notice of the continuation of these AD orders and CVD orders.

**DATES:** Effective September 17, 2013.

**FOR FURTHER INFORMATION CONTACT:** James Terpstra (AD) or Nancy Decker (CVD), AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3965 or (202) 482–0196, respectively.

**SUPPLEMENTARY INFORMATION:**

## Background

On September 4, 2012, the Department initiated and the ITC instituted sunset reviews of the AD and CVD orders on certain pasta from Italy and Turkey pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended (the Act), respectively.[1] As a result of its reviews, the Department found that revocation of the AD orders would likely lead to continuation or recurrence of dumping and that revocation of the CVD orders would likely lead to continuation or recurrence of countervailable subsidies, and notified the ITC of the margins of dumping and the subsidy rates likely to prevail were the orders revoked.[2]

On September 9, 2013, the ITC published its determination, pursuant to section 751(c) of the Act, that revocation of the AD orders on certain pasta from Italy and Turkey and the CVD orders on certain pasta from Italy would likely lead to continuation or recurrence of material injury within a reasonably foreseeable time.[3]

## Scope of the Orders

*Italy (A–475–818, C–475–819)*

The merchandise subject to the orders is pasta. The product is currently classified under items 1901.90.90.95 and 1902.19.20 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS numbers are provided for convenience and customs purposes, the written product description in the orders remains dispositive.[4]

*Turkey (A–489–805, C–489–806)*

The merchandise subject to the orders is pasta. The product is currently classified under items 1902.19.20 of the HTSUS. Although the HTSUS numbers are provided for convenience and customs purposes, the written product description in the orders remains dispositive.[5]

## Continuation of the Orders

As a result of the determinations by the Department and the ITC that revocation of these AD and CVD orders would likely lead to continuation or recurrence of dumping or a countervailable subsidy, and of material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the AD and CVD orders on certain pasta from Italy and Turkey.

U.S. Customs and Border Protection will continue to collect cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation of these orders is the date of publication in the **Federal Register** of this notice of continuation. Pursuant to sections 751(c)(2) and 751(c)(6) of the Act, the Department intends to initiate the next five-year review of these orders not later than 30 days prior to the fifth anniversary of the effective date of the continuation.

These five-year (sunset) reviews and notice are in accordance with section 751(c) of the Act and published pursuant to sections 751(c) and 777(i)(1) of the Act, as well as 19 CFR 351.218(f)(4).

Dated: September 10, 2013.

**Paul Piquado,**

*Assistant Secretary for Import Administration.*

[FR Doc. 2013–22465 Filed 9–16–13; 8:45 am]

**BILLING CODE 3510–DS–P**

[1] *See Notice of Initiation of Five-Year Sunset Review,* 77 FR 53867 (September 4, 2012); *Certain Pasta from Italy and Turkey; and Institution of Five-year Reviews Concerning the Countervailing and Antidumping Duty Orders on Certain Pasta from Italy and Turkey,* 77 FR 53909 (September 4, 2012).

[2] *See Certain Pasta From Italy and Turkey; Final Results of Expedited Third Sunset Reviews of Antidumping Duty Orders,* 78 FR 2368 (January 11, 2013); *Certain Pasta From Italy: Final Results of the Expedited Third Sunset Review of the Countervailing Duty Order,* 78 FR 693 (January 4, 2013); and *Certain Pasta From Turkey: Final Results of the Expedited Third Sunset Review of the Countervailing Duty Order,* 78 FR 692 (January 4, 2013).

[3] *See Certain Pasta from Italy and Turkey,* 78 FR 55095 (September 9, 2013); *see also Certain Pasta from Italy and Turkey* (Inv. Nos. 701–TA–365–366 and 731–TA–734–735 (Third Review), USITC Publication 4423, August 2013).

[4] *See Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta From Italy,* 61 FR 38547 (July 24, 1996); and *Notice of Countervailing Duty Order and Amended Final Affirmative Countervailing Duty Determination: Certain Pasta (''Pasta'') From Italy,* 61 FR 38544 (July 24, 1996). *See also, Certain Pasta from Italy: Notice of Preliminary Results of Antidumping Duty Administrative Review,* 77 FR 46377 (August 3, 2012) for a complete description, including the exclusions to the scope.

[5] *See Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta From Turkey,* 61 FR 38545 (July 24, 1996); *see also Certain Pasta From Turkey; 2010–2011; Final Results of Antidumping Duty Administrative Review,* 78 FR 9672 (February 11, 2013).

# DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## Proposed Information Collection; Comment Request; Conflict of Interest Disclosure for Nonfederal Government Individuals Who Are Candidates To Conduct Peer Reviews

**AGENCY:** National Oceanic and Atmospheric Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before November 18, 2013.

**ADDRESSES:** Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Michael Liddel (301) 427–8139 or *Michael.Liddel@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Abstract

This is an extension of a currently approved collection.

The Office of Management and Budget (OMB) issued government-wide guidance to enhance the practice of peer review of government science documents. OMB's Final Information Quality Bulletin for Peer Review (''Peer Review Bulletin'' or PRB) (available at *http://www.whitehouse.gov/omb/memoranda/fy2005/m05-03.pdf*) establishes minimum peer review standards for influential scientific information that Federal agencies intend to disseminate.

The Peer Review Bulletin also directs Federal agencies to adopt or adapt the National Academy of Sciences (NAS) policy for evaluating conflicts of interest when selecting peer reviewers who are not Federal government employees (federal employees are subject to Federal ethics requirements). For peer review purposes, the term ''conflicts of interest'' means any financial or other

interest which conflicts with the service of the individual because it could: (1) Significantly impair the individual's objectivity; or (2) create an unfair competitive advantage for any person or organization.

NOAA has adapted the NAS policy and developed two confidential conflict disclosure forms which the agency will use to examine prospective reviewers' potential financial conflicts and other interests that could impair objectivity or create an unfair advantage. One form is for peer reviewers of studies related to government regulation and the other form is for all other influential scientific information subject to the Peer Review Bulletin. In addition, the latter form has been adapted by NOAA's Office of Oceanic and Atmospheric Research for potential reviewers of scientific laboratories.

The forms include questions about employment as well as investment and property interests and research funding. Both forms also require the submission of curriculum vitae. NOAA is seeking to collect this information from potential peer reviewers who are not government employees when conducting a peer review pursuant to the PRB. The information collected in the conflict of interest disclosure is essential to NOAA's compliance with the OMB PRB, and helps to ensure that government studies are reviewed by independent, impartial peer reviewers.

## II. Method of Collection

Forms may be downloaded from the Internet and are fillable and signable electronically or manually. They may be submitted, along with the Curriculum Vitae, via email or regular mail.

## III. Data

*OMB Control Number:* 0648–0567.

*Form Number:* None.

*Type of Review:* Regular submission (extension of a currently approved collection).

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 321.

*Estimated Time per Response:* 30 minutes.

*Estimated Total Annual Burden Hours:* 161.

*Estimated Total Annual Cost to Public:* $0 in recordkeeping/reporting costs.

## IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 11, 2013.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2013–22514 Filed 9–16–13; 8:45 am]

BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## Membership of the NOAA Performance Review Board

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Notice of Membership of the NOAA Performance Review Board (PRB).

**SUMMARY:** In accordance with 5 U.S.C. 4314(c)(4), NOAA announces the appointment of members who will serve on the NOAA's PRB. The NOAA PRB is responsible for reviewing performance appraisals and ratings of Senior Executive Service (SES) Senior Level, Scientific and Professional members and making written recommendations to the appointing authority on retention and compensation matters, including performance-based pay adjustments and awarding of bonuses. The appointment of new members to the NOAA PRB will be for a period of two years.

**DATES:** The effective date of service of the appointees to the NOAA PRB is September 30, 2013.

**FOR FURTHER INFORMATION CONTACT:** Christine Nalli, Director, Executive Resources, Workforce Management Office, NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910, (301) 713–6301.

**SUPPLEMENTARY INFORMATION:** The names and positions of the primary and alternate members for the Fiscal Year 2013 NOAA PRB are set forth below:

| | |
|---|---|
| Holly A. Bamford, Chair | Assistant Administrator for Ocean Services and Coastal Zone Management, National Ocean Service. |
| Mark S. Paese, Co-Chair | Deputy Assistant Administrator, National Environmental Satellite, Data and Information Service. |
| Jon P. Alexander | Director, Finance Office/Comptroller, Office of the Chief Financial Officer. |
| Russell F. Smith III | Deputy Assistant Secretary for International Fisheries, Office of the Under Secretary for Oceans and Atmosphere. |
| Tyra D. Smith | Deputy Director, Office of Human Resources Management, U.S. Department of Commerce. |

| | |
|---|---|
| Alternates: | |
| Ciaran M. Clayton | Director of Communications, Office of the Under Secretary for Oceans and Atmosphere. |
| Steven S. Fine, Ph.D | Deputy Assistant Administrator for Laboratories and Cooperative Institutes and Director, Air Resources Laboratory, Office of Oceanic and Atmospheric Research. |
| Edward C. Cyr, Ph.D | Director, Office of Science and Technology, National Marine Fisheries Service. |

Dated: September 4, 2013.

**Kathryn D. Sullivan,**

*Acting Under Secretary of Commerce for Oceans and Atmosphere.*

[FR Doc. 2013–22538 Filed 9–16–13; 8:45 am]

**BILLING CODE 3510–12–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XC289**

### Endangered Species; File No. 16230

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

**ACTION:** Notice of permit issuance.

**SUMMARY:** Notice is hereby given that NMFS has issued a permit to the North Carolina Division of Marine Fisheries (NCDMF) for the incidental take of sea turtles associated with the otherwise lawful commercial gillnet fishery in North Carolina inshore state waters.

**ADDRESSES:** The incidental take permit, final environmental assessment, and other related documents are available on the NMFS Office of Protected Resources Web site at *http://www.nmfs.noaa.gov/pr/permits/esa_review.htm.*

**FOR FURTHER INFORMATION CONTACT:** Kristy Long (ph. 301–427–8402, email *Kristy.Long@noaa.gov* or Sara McNulty (ph. 301–427–8402, email *Sara.McNulty@noaa.gov*).

**SUPPLEMENTARY INFORMATION:** On August 18, 2011, NCDMF submitted a revised application to NMFS for Permit No. 16230, requesting authorization for incidental take of sea turtles listed under the Endangered Species Act (ESA) associated with commercial and recreational gillnet fisheries in inshore state waters for three years. The application requests incidental take authorization for endangered Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) sea turtles and threatened green (*Chelonia mydas*) and loggerhead sea turtles (*Caretta caretta*). NMFS published a notice of receipt of the August 2011 application and a request for public comments on October 5, 2011 (76 FR 61670). Based on comments received from the public, independent reviewers, and NMFS, NCDMF subsequently submitted a second revised application on September 6, 2012. NMFS has issued the requested permit under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

This permit authorizes the incidental take of specified numbers of sea turtles incidental to the continued commercial harvest of target fish species in gillnets subject to monitor, minimize, and mitigate incidental take in North Carolina inshore state waters as set forth in the conservation plan and the permit for a 10-year period.

The conservation plan includes managing inshore gill net fisheries by dividing estuarine waters into six management units (i.e., A, B, C, D1, D2, E). Each of the management units will be monitored seasonally and by fishery. Management Unit A encompasses all estuarine waters north of 35° 46.30'N. to the North Carolina/Virginia state line. This includes all of Albemarle, Currituck, Croatan, and Roanoke sounds as well as the contributing river systems in this area. Management Unit B encompasses all estuarine waters south of 35° 46.30′ N., east of 76° 30.00′ W., and north of 34° 48.27′ N. This Management Unit will include all of Pamlico Sound and the Northern portion of Core Sound. Management Unit C will include the Pamlico, Pungo and Neuse river drainages west of 76° 30.00′ W. Management Unit D1 encompasses all estuarine waters south of 34° 48.27′ N. and east of a line running from 34° 40.70′ N.–76° 22.50′ W. to 34° 42.48′ N.–76° 36.70′ W. Management Unit D1 includes Southern Core Sound, Back Sound and North River. Management Unit D2 encompasses all estuarine waters west of a line running from 34° 40.70′ N.–76° 22.50′ W. to 34° 42.48′ N.–76° 36.70′ W. to the Highway 58 bridge. Management Unit D2 includes Newport River and Bogue Sound. Management Unit E encompasses all estuarine waters south and west of the Highway 58 bridge to the North Carolina/South Carolina state line. This includes the Atlantic Intercoastal Waterway and adjacent sounds, and the New, Cape Fear, Lockwood Folly, White Oak, and Shallotte rivers.

Required management measures include: (1) Restricted soak times for large mesh gillnets from one hour before sunset on Monday through Thursday and one hour after sunrise from Tuesday through Friday (i.e., fishing is prohibited from one hour after sunrise on Friday through one hour before sunset on Monday); (2) restrictions on the maximum net length per large mesh fishing operation (i.e., 2,000 yards (1.83 km, 6,000 ft) per operation except south of the NC Highway 58 bridge and Management Area D2 where 1,000 yards (0.91 km, 3,000 ft) is maximum; (3) restrictions on large mesh net-shot lengths to 100 yards (91.44 m, 300 ft) with a 25 yard (22.86 m, 75 ft) separation between each net-shot; (4) requirement for large mesh nets to be low profile (e.g., maximum of 15 meshes in depth, tie-downs prohibited, floats or corks prohibited along float lines north of the NC Highway 58 bridge); (5) closure of Management Area D1 to unattended large mesh gillnets from May 8–October 14 annually; (6) prohibition on large mesh gillnets in the deep water portions of the Pamlico Sound Gillnet Restricted Area (PSGNRA) and Oregon, Hatteras, and Ocracoke inlets from September 1–December 15; (7) adaptive fishery management measures and restrictions through state proclamation authority (e.g., gear and/or area restrictions, attendance requirements, increased observer coverage and/or enforcement); and (8) continuation of North Carolina's regulations for small mesh gillnet attendance requirements.

NCDMF will maintain a monitoring program that consists of a combination of onboard and alternate platform observers, trip ticket program, and marine patrol officer activities (when needed). NCDMF will monitor six primary management units in inshore waters as described in the conservation plan. NCDMF will monitor at least 7% (with a goal of 10%) of large mesh (≥4.0 ISM) gillnet trips in each area during each of 3 seasons (i.e., spring, summer, and fall) as defined in the conservation plan. NCDMF will monitor at least 1% (with a goal of 2%) of small mesh (<4.0 ISM) gillnet trips in each area during each of three seasons (i.e., spring, summer, fall) as defined in the conservation plan.

The amount of annual incidental take of sea turtles authorized is expressed as either estimated or observed takes depending on the amount of data available for modeling predicted takes. Because reaching the estimated or observed level for any category of take for any species would end the incidental take authorization for all species, it is highly unlikely that all five species would be impacted at these levels. For areas B, D1, D2, and E, the annual incidental take authorized by species is 49 estimated dead, 98 estimated live, and 12 observed (live or dead) Kemp's ridley turtles; 165 estimated dead, 330 estimated live, and 18 observed (live or dead) green turtles; 24 observed (live or dead) loggerhead turtles; eight observed (live or dead) leatherback turtles; and eight observed (live or dead) hawksbill turtles.

Additionally, eight observed (live or dead) of any of the five species are authorized for areas A and C.

Dated: September 10, 2013.

**Perry Gayaldo,**

*Acting Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2013–22592 Filed 9–16–13; 8:45 am]

BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648–XW11

### Marine Mammals; File No. 14514

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

**ACTION:** Notice; receipt of application for permit amendment.

**SUMMARY:** Notice is hereby given that the University of Florida, Aquatic Animal Program, College of Veterinary Medicine, Gainesville, FL 32610 (Ruth Francis-Floyd, Responsible Party), has requested an amendment to Permit No. 14514 to receive, import, and export marine mammal specimens for scientific research.

**DATES:** Written, telefaxed, or email comments must be received on or before October 17, 2013.

**ADDRESSES:** The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the *Features* box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 14514 from the list of available applications.

These documents are also available upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)427–8401; fax (301)713–0376; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, FL 33701; phone (727)824–5312; fax (727)824–5309.

Written comments on these applications should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301)713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

**FOR FURTHER INFORMATION CONTACT:** Amy Sloan or Jennifer Skidmore, (301)427–8401.

**SUPPLEMENTARY INFORMATION:** The subject amendment is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

Permit No. 14514, issued on July 28, 2010 (75 FR 50748), authorizes the University of Florida to receive, import, and export marine mammal parts under NMFS jurisdiction for research on disease including viral pathogens and brevetoxin studies; development of a marine mammal histology database and atlas and marine mammal cell lines; and comparative morphology studies. The permit authorizes receipt, import, and export of marine mammal parts (hard and soft parts) from up to 200 animals per year within the order Cetacea (dolphins, porpoises and whales) and 100 animals per year within the order Pinnipedia (sea lions and seals but excluding walruses). The permit expires July 31, 2015. The permit holder is requesting the permit be amended to increase the number of animals from which pinniped samples may be received, imported, or exported from 100 to 700 animals per year for additional studies on viral pathogens (adenovirus and herpesvirus). The permit holder also requests personnel changes.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activities proposed are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: September 12, 2013.

**P. Michael Payne,**

*Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2013–22537 Filed 9–16–13; 8:45 am]

BILLING CODE 3510–22–P

## DEPARTMENT OF DEFENSE

### Department of the Army

[Docket ID: USA–2013–0032]

### Proposed Collection; Comment Request

**AGENCY:** Office of the Administrative Assistant to the Secretary of the Army (OAA-AAHS), DoD.

**ACTION:** Notice.

**SUMMARY:** In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Office of the Administrative Assistant to the Secretary of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by November 18, 2013.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

*Instructions:* All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any

personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Department of the Army, Military Surface Deployment and Distribution Command, (AMSSD–SP), 1 Soldier Way, ATTN: C. Sue Kennedy, Scott Air Force Base, Illinois 62225–5006, or call Department of the Army Reports Clearance Officer at (703) 428–6440.

**SUPPLEMENTARY INFORMATION:**

*Title, Associated Form, and OMB Number:* Industry Partnership Survey, OMB Control Number 0702–0122.

*Needs and Uses:* The information collected from this survey will be used to systematically survey and measure industry contractors to better understand how they feel about SDDC's acquisition processes and to improve the way business is conducted. The SDDC provides global surface deployment command and control and distribution operations to meet National Security objectives in peace and war. They are working to be the Warfighter's single surface deployment/distribution provider for adaptive and flexible solutions delivering capability and sustainment on time. Respondents will be commercial firms who have contracts awarded by SDDC for several program areas.

*Affected Public:* Business or Other for-Profit.

*Annual Burden Hours:* 632.

*Number of Respondents:* 1,264.

*Responses per Respondent:* 1.

*Average Burden per Response:* 30 minutes.

*Frequency:* Annually.

SDDC works with industry partners in several program areas, Global Domestic Distribution Program, Freight Global Distribution Program, Personal Property Traffic Management Program, Transportation Engineering Agency, Army Ammunition & Explosives and several more. Most industry partners only provide services in one or two of the program areas, so the survey design provides for transparently skipping respondents only to the sections that are relevant to them. To make performance improvements in the operations of these programs areas, SDDC plans to undertake voluntary surveys of our ''partners'' in industry for 3 years from the approval/renewal date.

Dated: September 12, 2013.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2013–22577 Filed 9–16–13; 8:45 am]

**BILLING CODE 5001–06–P**

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## DEPARTMENT OF DEFENSE

### Department of the Army

### Advisory Committee on Arlington National Cemetery (ACANC)

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice of open committee meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (U.S.C. 552b, as amended) and 41 Code of the Federal Regulations (CFR 102–3. 140 through 160), the Department of the Army announces the following committee meeting:

*Name of Committee:* Advisory Committee on Arlington National Cemetery.

*Date of Meeting:* Thursday, October 3, 2013.

*Time of Meeting:* 9:30 a.m.–3:30 p.m.

*Place of Meeting:* Women in Military Service for America Memorial, Conference Room, Arlington National Cemetery, Arlington, VA.

*Proposed Agenda:* Review and discuss the Section 60 Mementos Pilot Program, highlights of upcoming events for the 50th Commemoration of the interment of John F. Kennedy and 150th anniversary of Arlington National Cemetery, and the status of expansion projects.

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is on a first-come basis.

**FOR FURTHER INFORMATION CONTACT:** Ms. Renea C. Yates; Designated Federal Officer; *renea.c.yates.civ@mail.mil* or 703–614–1248.

**SUPPLEMENTARY INFORMATION:** The following topics are on the agenda for discussion:

○ Army National Cemeteries operational update.

○ Memorial requests consultation IAW PL 112–154.

○ Subcommittee Activities:

• ''Honor'' Subcommittee: independent recommendations of methods to address the long-term future of Arlington National Cemetery, including how best to extend the active burials and on what ANC should focus once all available space has been used.

• ''Remember'' Subcommittee: recommendations on preserving the marble components of the Tomb of the Unknown Soldier, including the cracks in the large marble sarcophagus, the adjacent marble slabs, and the potential replacement of the marble stone for the sarcophagus already gifted to the Army.

• ''Explore'' Subcommittee: recommendations on Section 60 Mementos study and improving the quality of visitors' experiences, now and for generations to come.

The Committee's mission is to provide the Secretary of Defense, through the Secretary of the Army, independent advice and recommendations on Arlington National Cemetery, including, but not limited to:

a. Management and operational issues, including bereavement practices;

b. Plans and strategies for addressing long-term governance challenges;

c. Resource planning and allocation; and

d. Any other matters relating to Arlington National Cemetery that the Committee's co-chairs, in consultation with the Secretary of the Army, may decide to consider.

*Filing Written Statement:* Pursuant to 41 CFR 102–3.140d, the Committee is not obligated to allow the public to speak; however, interested persons may submit a written statement for consideration by the Committee. Written statements must be received by the Designated Federal Officer at the following address: Advisory Committee on Arlington National Cemetery, ATTN: Designated Federal Officer (DFO) (Ms. Yates), Arlington National Cemetery, Arlington, Virginia 22211 not later than 5:00 p.m., Wednesday, September 27, 2013. Written statements received after this date may not be provided to or considered by the Advisory Committee on Arlington National Cemetery until the next open meeting. The Designated Federal Officer will review all timely submissions with the Committee Chairperson and ensure they are provided to the members of the Advisory Committee on Arlington National Cemetery.

**Brenda S. Bowen,**

*Army Federal Register Liaison Officer.*

[FR Doc. 2013–22496 Filed 9–16–13; 8:45 am]

**BILLING CODE 3710–08–P**

## DEPARTMENT OF EDUCATION

**[Docket No. ED–2013–ICCD–0122]**

### Agency Information Collection Activities; Comment Request; Impact Aid Program Application for Section 8003 Assistance

**AGENCY:** Office of Elementary and Secondary Education (OESE), Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

**DATES:** Interested persons are invited to submit comments on or before November 18, 2013.

**ADDRESSES:** Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2013–ICCD–0122 or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E115, Washington, DC 20202–4537.

**FOR FURTHER INFORMATION CONTACT:** For questions related to collection activities or burden, please call Tomakie Washington, 202–401–1097or electronically mail *ICDocketMgr@ed.gov.* Please do not send comments here.

**SUPPLEMENTARY INFORMATION:** The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

*Title of Collection:* Impact Aid Program Application for Section 8003 Assistance.

*OMB Control Number:* 1810–0687.

*Type of Review:* A revision of an existing information collection.

*Respondents/Affected Public:* State, Local, or Tribal Governments.

*Total Estimated Number of Annual Responses:* 501,264.

*Total Estimated Number of Annual Burden Hours:* 140,676.

*Abstract:* The U.S. Department of Education is requesting approval for the Application for Assistance under Section 8003 of Title VIII of the Elementary and Secondary Education Act as amended by No Child Left Behind. This application is otherwise known as Impact Aid Basic Support Payments. Local Educational Agencies whose enrollments are adversely affected by Federal activities use this form to request financial assistance. Regulations for the Impact Aid Program are found at 34 CFR part 222. The statute and regulations for this program require a variety of data from applicants annually to determine eligibility for the grants and the amount of grant payment under the statutory formula. The least burdensome method of collecting this required information is for each applicant to submit these data through a web-based electronic application hosted on the Department of Education's e-Grants Web site.

Dated: September 11, 2013.

**Tomakie Washington,**

*Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.*

[FR Doc. 2013–22506 Filed 9–16–13; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

### President's Board of Advisors on Historically Black Colleges and Universities

**AGENCY:** U.S. Department of Education, President's Board of Advisors on Historically Black Colleges and Universities.

**ACTION:** Notice of an Open Meeting.

**SUMMARY:** This notice sets forth the schedule and agenda of the meeting of the President's Board of Advisors on Historically Black Colleges and Universities. The notice also describes the functions of the Board. Notice of the meeting is required by section 10(a)(2) of the Federal Advisory Committee Act and intended to notify the public of its opportunity to attend. This notice is being published less than 15 days prior to the meeting date due to the need to obtain sponsors/supplemental funding for the meeting during the annual HBCU Conference scheduled for the same week. Due to stringent budget constraints, it is more feasible to have a board meeting while the members are already in Washington, DC for the conference as opposed to having them return at a later date and having the board incur additional expenses.

**DATES:** Wednesday, September 25, 2013.

*Time:* 9:00 a.m.–2:00 p.m. (EST).

**ADDRESSES:** Washington Hilton, Cabinet Room, 1919 Connecticut Ave. NW., Washington, DC 20009, (202) 483–3000.

**FOR FURTHER INFORMATION CONTACT:** Joel V. Harrell, Acting Executive Director, White House Initiative on Historically Black Colleges and Universities, 400 Maryland Avenue SW., Washington, DC 20204; telephone: (202) 453–5634, fax: (202) 453–5632.

**SUPPLEMENTARY INFORMATION:** The President's Board of Advisors on Historically Black Colleges and Universities (the Board) is established by Executive Order 13532 (February 26, 2010). The Board is governed by the provisions of the Federal Advisory Committee Act (FACA), (Pub. L 92–463; as amended, 5 U.S.C.A., Appendix 2) which sets forth standards for the formation and use of advisory committees. The purpose of the Board is to advise the President and the Secretary of Education (Secretary) on all matters pertaining to strengthening the educational capacity of Historically Black Colleges and Universities (HBCUs).

The Board shall advise the President and the Secretary in the following areas: (i) Improving the identity, visibility, and distinctive capabilities and overall competitiveness of HBCUs; (ii) engaging the philanthropic, business, government, military, homeland-security, and education communities in a national dialogue regarding new HBCU programs and initiatives; (iii) improving the ability of HBCUs to remain fiscally secure institutions that

can assist the nation in reaching its goal of having the highest proportion of college graduates by 2020; (iv) elevating the public awareness of HBCUs; and (v) encouraging public-private investments in HBCUs.

**Agenda**

The Board will receive updates from the Chairman of the President's Board of Advisors on HBCUs, the Board's subcommittees and the Acting Executive Director of the White House Initiative on HBCUs on their respective activities, thus far, during Fiscal Year 2013 including activities that have occurred since the Board's last meeting, which was held on June 11, 2013. In addition, the Board will discuss possible strategies to meet its duties under its charter. Special guests have been invited to provide updates on federal student aid and cohort default rates.

Individuals who will need accommodations for a disability in order to attend the meeting (e.g., interpreting services, assistive listening devices, or material in alternative format) should notify Sedika Franklin, Program Specialist, White House Initiative on HBCUs, at (202) 453–5630, no later than Friday, September 20, 2013. We will attempt to meet requests for such accommodations after this date, but cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

An opportunity for public comment is available on Wednesday, September 25, 2013, from 1:30 p.m.–2:00 p.m. Individuals who wish to provide comments will be allowed three to five minutes to speak. Those members of the public interested in submitting written comments may do so by submitting them to the attention of Sedika Franklin, White House Initiative on Historically Black Colleges and Universities, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202, by Monday, September 23, 2013.

Records are kept of all Board proceedings and are available for public inspection at the office of the White House Initiative on Historically Black Colleges and Universities, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC, 20202, Monday through Friday (excluding federal holidays) during the hours of 9:00 a.m. to 5:00 p.m.

Electronic Access to the Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/fedregister/index.html*. To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–866–512–1830; or in the Washington, DC area at 202–512–0000.

Dated: September 11, 2013.

**Jeff Appel,**

*Deputy Under Secretary, U.S. Department of Education.*

[FR Doc. 2013–22580 Filed 9–16–13; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

### National Board for Education Sciences; Meeting

**AGENCY:** Institute of Education Sciences, ED.

**ACTION:** Notice of an open meeting.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of an upcoming meeting of the National Board for Education Sciences (NBES). The notice also describes the functions of the Committee. Notice of this meeting is required by Section 10(a) (2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend the meeting.

**DATES:** October 3, 2013.

Time: 8:30 a.m. to 5:00 p.m. Eastern Standard Time.

**ADDRESSES:** 80 F Street NW., Room 100, Washington, DC 20001.

**FOR FURTHER INFORMATION CONTACT:** Ellie Pelaez, 555 New Jersey Avenue NW., Room 600 E, Washington, DC 20208; phone: (202) 219–0644; fax: (202) 219–1402; email: *Ellie.Pelaez@ed.gov.*

**SUPPLEMENTARY INFORMATION:** The National Board for Education Sciences is authorized by Section 116 of the Education Sciences Reform Act of 2002 (ESRA), *20 U.S.C. 9516.* The Board advises the Director of the Institute of Education Sciences (IES) on, among other things, the establishments of activities to be supported by the Institute, on the funding for applications for grants, contracts, and cooperative agreements for research after the completion of peer review, and reviews and evaluates the work of the Institute.

On October 3, 2013, starting at 8:30 a.m., the Board will call the meeting to order, approve the agenda and hear remarks from the NBES Chair, Bridget Terry Long. John Easton and the Commissioners of IES's national centers will then give an overview of recent developments at IES. A break will take place from 10:00 to 10:15 a.m.

From 10:15 to 11:15 a.m., Board members will hear from Jack Buckley, Commissioner of the National Center for Education Statistics, with an update on the Middle Grades Longitudinal Study (MGLS). After opening remarks from Dr. Buckley, the Board members will participate in roundtable discussion.

From 11:00 a.m. to 12:30 p.m., the Board will consider the topic, ''Supporting English Language Learners.'' Following opening remarks by Sean Reardon of Stanford University, Board members will engage in roundtable discussion of the issues raised. The meeting will break for lunch from 12:30 to 1:30 p.m.

The Board meeting will resume from 1:30 to 3:00 p.m. for the members to discuss the What Works Clearinghouse in regards to postsecondary education topics. After opening remarks from Ruth Neild, Commissioner of the National Center for Education Evaluation (NCEE) and Jeffrey Valentine, Principal Investigator for What Works Clearinghouse—Postsecondary Topics, the Board will engage in roundtable discussion of the topic. An afternoon break will take place from 3:00 to 3:15 p.m.

From 3:15 to 4:15 p.m., the Board will consider the topic, ''Evaluating IES: Reflections from the Education Sciences Reform Act Hearing.'' Bridget Terry Long will provide the opening remarks and roundtable discussion will take place after.

Between 4:15 and 4:45 p.m., there will be a discussion of Board Leadership, followed by roundtable discussion by the Board.

Closing remarks and a consideration of next steps from the IES Director and NBES Chair will take place from 4:45 to 5:00 p.m., with adjournment scheduled for 5:00 p.m.

There will not be an opportunity for public comment. However, members of the public are encouraged to submit written comments related to NBES to Ellie Pelaez (see contact information above).

A final agenda is available from Ellie Pelaez (see contact information above) and is posted on the Board Web site *http://ies.ed.gov/director/board/agendas/index.asp.* Individuals who will need accommodations for a disability in order to attend the meeting (e.g., interpreting services, assistance listening devices, or materials in alternative format) should notify Ellie Pelaez no later than September 20. We will attempt to meet requests for accommodations after this date but cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

Records are kept of all Board proceedings and are available for public

inspection at 555 New Jersey Avenue NW., Room 602 I, Washington, DC 20208, from the hours of 9 a.m. to 5 p.m., Eastern Standard Time Monday through Friday.

*Electronic Access to This Document:* You may view this document, as well as other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/news/fed-register/index.html.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–866–512–1800; or in the Washington, DC are at (202) 512–0000.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to this official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *www.gpoaccess.gov/nara/index.html.*

**John Q. Easton,**

*Director, Institute of Education Science.*

[FR Doc. 2013–22615 Filed 9–16–13; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

**[Docket No. EERE–BT–2013–DET–0017]**

### Energy Efficiency Program for Industrial Equipment: Interim Determination Classifying UL Verification Services Inc. as a Nationally Recognized Certification Program for Small Electric Motors

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Notice of interim determination and request for public comments.

**SUMMARY:** This notice announces an interim determination by the U.S. Department of Energy (DOE) classifying UL Verification Services (UL) as a nationally recognized certification program under 10 CFR 431.447 and 431.448.

**DATES:** DOE will accept comments, data, and information with respect to the UL Petition until October 17, 2013.

**ADDRESSES:** You may submit comments, identified by docket number ''EERE–BT–2013–DET–0017,'' by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: CertProgSmElecMotors2013DET0017@ee.doe.gov* Include the docket number EERE–BT–2013–DET–0017 in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, Mailstop EE–2J/1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Please submit one signed original paper copy.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Please submit one signed original paper copy.

*Docket:* For access to the docket to review the background documents relevant to this matter, you may visit the U.S. Department of Energy, 950 L'Enfant Plaza SW., Washington, DC, 20024; (202) 586–2945, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at the above telephone number for additional information.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Lucas Adin, U.S. Department of Energy, Building Technologies Office, Mail Stop EE–2J, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–1317. Email: *Lucas.Adin@ee.doe.gov*.

Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0103. Telephone: (202) 586–8145. Email: *Michael.Kido@hq.doe.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. Background and Authority

Part C of Title III of the Energy Policy and Conservation Act contains energy conservation requirements for, among other things, electric motors and small electric motors, including test procedures, energy efficiency standards, and compliance certification requirements. 42 U.S.C. 6311–6316.[1] Section 345(c) of EPCA directs the Secretary of Energy to require manufacturers of electric motors ''to certify through an independent testing or certification program nationally recognized in the United States, that [each electric motor subject to EPCA efficiency standards] meets the applicable standard.'' 42 U.S.C. 6316(c).

Regulations to implement this statutory directive are codified in Title 10 of the Code of Federal Regulations Part 431 (10 CFR Part 431) at sections 431.36, Compliance Certification, 431.20, Department of Energy recognition of nationally recognized certification programs, and 431.21, Procedures for recognition and withdrawal of recognition of accreditation bodies and certification programs. Sections 431.20 and 431.21 set forth the criteria and procedures for national recognition of an energy efficiency certification program for electric motors by DOE. With the support of a variety of interests, including industry and energy efficiency advocacy groups, DOE published a final rule on May 4, 2012, that established requirements for small electric motors that are essentially identical to the criteria and procedures for national recognition of an energy efficiency certification program for electric motors. See 77 FR 26608, 26629 (codifying parallel provisions for small electric motors at 10 CFR 431.447 and 431.448).

For a certification program to be classified by the DOE as being nationally recognized in the United States for the testing and certification of small electric motors, the organization operating the program must submit a petition to the Department requesting such classification, in accordance with §§ 431.447 and 431.448. In sum, for the Department to grant such a petition, the certification program must: (1) Have satisfactory standards and procedures for conducting and administering a certification system, and for granting a certificate of conformity; (2) be independent of small electric motor manufacturers, importers, distributors, private labelers or vendors; (3) be qualified to operate a certification system in a highly competent manner; and (4) be expert in the test procedures and methodologies in IEEE Standard 112–2004 Test Methods A and B, IEEE Standard 114–2010, CSA Standard C390–10, and CSA C747 or similar procedures and methodologies for determining the energy efficiency of small electric motors, and have satisfactory criteria and procedures for selecting and sampling small electric motors for energy efficiency testing. 10 CFR 431.447(b).

Each petition requesting classification as a nationally recognized certification program must contain a narrative statement as to why the organization meets the above criteria, be accompanied by documentation that

[1] For editorial reasons, upon codification in the U.S. Code, Part C was re-designated Part A–1.

supports the narrative statement, and be signed by an authorized representative. 10 CFR 431.447(c).

**II. Discussion**

Pursuant to sections 431.447 and 431.448, on February 20, 2013, UL submitted to the Department a Petition for ''Classification in Accordance with 10 CFR Part 431.447 and 431.448'' (''Petition'' or ''UL Petition''). The Petition was accompanied by a cover letter from UL to the Department, containing five separate sections that included narrative statements for each—(1) Overview, (2) Standards and Procedures, (3) Independent Status, (4) Qualification of UL LCC and UL Verification Services, Inc. to Operate a Certification System, and (5) Expertise in Small Motor Test Procedures. In accordance with the requirements of § 431.448(b), DOE published UL's petition in the **Federal Register** on May 16, 2013 and requested public comments. 78 FR 28812.

In response to that notice, the National Electrical Manufacturers Association (NEMA), a trade association representing manufacturers of electrical products including small electric motors, submitted comments to DOE in a letter dated June 17, 2013 (Comment response to the published Notice of Petition, No. 5). In these comments, NEMA cited several concerns regarding UL's petition, listing them according to each item on which DOE requested comments in the notice of petition. UL then submitted a letter to DOE dated June 26, 2013 responding to NEMA's comments (Comment responding to NEMA's comments on UL petition, No. 6).

Regarding DOE's issue for comment on whether UL has satisfactory standards and procedures for conducting and administering a certification program, NEMA stated that UL operates an effective certification system for safety standards and, though it is new to certification of electric motor efficiency, offers certification programs for ''EISA type'' electric motor certifications (i.e., certification to the current DOE efficiency standards for electric motors). It also stated that as far as its members are aware, UL does not perform efficiency testing itself and instead uses outside labs for testing such as manufacturer labs or third-party labs such as Advanced Energy. (Comment response to the published Notice of Petition, No. 5, p. 3) UL rebutted NEMA's statement that it is new to the motor efficiency certification market by stating that it has been certifying motors for energy efficiency for 11 years and has been recognized by DOE for certification of electric motors under 10 CFR part 431.[2] In response to NEMA's comment about its use of manufacturer and third-party laboratories, UL explained that because it currently certifies motors rated between 1 and 500 horsepower, many of the motors are large enough that the cost of shipping the motor could exceed the cost of the testing, making it impractical for UL to conduct testing in-house. UL stated that it instead sends a motor engineer to the manufacturer or third-party lab to witness the testing and verify the proper setup and conduct of the tests. (Comment responding to NEMA's comments on UL petition, No. 6, p. 1)

In response to DOE's request for comment regarding UL's expertise in the procedures and methodologies required by DOE for certification of small electric motors, NEMA stated that UL is not recognized as an expert in this area and does not participate in the development or revision of the applicable industry standards. NEMA also stated that, while UL's test capability is limited by its use of manufacturer or third-party laboratories, its proficiency in other types of testing demonstrates their capability to obtain the necessary expertise for motors testing by participating in review of the test standards. More specifically, NEMA stated that it is not familiar with UL's capability to conduct in-house tests in accordance with the prescribed test methods and does not believe the information in UL's petition provides sufficient information to determine UL's knowledge or capability. NEMA also noted that UL is not listed in the Directory of Accredited Laboratories for Efficiency Testing of Electric Motors on the Web site of the National Voluntary Laboratory Accreditation Program (NVLAP) of the National Institute of Standards and Technology (NIST). (Comment response to the published Notice of Petition, No. 5, pp. 3–4) In response, UL stated that, while participation in the standards development process provides an opportunity to offer technical expertise, it does not lead to the attainment of such expertise. Responding to NEMA's assertion that UL lacks NVLAP accreditation, UL stated that it had no practical or business need to attain such accreditation, since DOE has previously recognized UL as a nationally recognized certification program for electric motors. (Comment responding to NEMA's comments on UL petition, No. 6, p. 2)

NEMA also commented on several specific issues on which DOE requested comment regarding whether it should grant UL's petition for recognition. Specifically, NEMA objected to UL's requirement that motors tested for efficiency in the program would also be required to be tested for compliance with UL's Motor Safety Standard(s), and stated that DOE should specifically state that such participation in UL programs other than energy efficiency testing must be on a voluntary basis. (Comment response to the published Notice of Petition, No. 5, p. 4) UL responded that the requirement for motors to meet safety standards at their rated horsepower is essential to ensuring the product's safe operation under its rated conditions and that it would be unwilling to endorse through the use of its mark (i.e., the UL safety marking) that a tested motor that has not undergone this safety-related testing can safely operate at the manufacturer's declared rating. UL also noted that manufacturers who are unwilling to pursue safety certification have other options, and need not attain DOE certification using their program. (Comment responding to NEMA's comments on UL petition, No. 6, p. 2)

NEMA also objected to UL's stated sampling requirements for audit testing and verification of the manufacturer's alternative efficiency determination method (AEDM) (*see* 78 FR at 28818–28819), and recommended that DOE clarify that these requirements are solely within DOE's jurisdiction. NEMA disagreed with UL's stated minimum sample of 20% of the manufacturer's initial product submittal due to the testing and financial burden it may impose, since there may be tens of thousands of designs for a type of covered equipment. (Comment response to the published Notice of Petition, No. 5, p. 4) UL responded that its ''Follow-up Services (FUS)'' is designed to ensure that products that it has tested and certified continue to meet the prescribed requirements and that the unit of the model that was initially tested is representative of production units. UL also explained that it set its specified sampling requirement based upon its own experience and in the absence of a DOE-established sampling requirement, and that it would adhere to any specific requirements established by DOE. (Comment responding to NEMA's comments on UL petition, No. 6, p. 2)

NEMA also commented on several other items regarding UL's petition. This included UL's independence from small electric motor manufacturers, importers,

[2] DOE issued a final determination on December 27, 2002 classifying UL as a nationally recognized certification program for electric motor efficiency. *See* 67 FR 79490 (December 27, 2002).

distributors, private labelers, or vendors, on which NEMA stated that it agrees that UL is independent in that it is not under the control of any such entities, and that it does not view the fees UL charges for its certification services as presenting a conflict with this requirement. NEMA also pointed out that in its petition UL incorrectly cited to requirements for electric motors in 10 CFR 431.17(a)(b), which are not applicable to small electric motors.[3] (Comment response to the published Notice of Petition, No. 5, pp. 3–4) UL did not respond to these specific comments.

Finally, NEMA made a number of general comments stating its opposition to the granting of UL's petition on the grounds that DOE has not yet sufficiently established definitions and certification requirements applicable to small electric motors. Specifically, NEMA stated that because DOE has not yet established in Subpart X to Part 431 definitions for the terms ''certificate of conformity,'' ''certification program,'' and ''certification system'' as exist in § 431.12, DOE has not yet provided a basis on which to determine whether a particular certification program should be recognized. NEMA also pointed out that the UL referred to the petition as for ''electric motors'' rather than for ''small electric motors,'' which could confuse the scope of UL's authority. NEMA recommended that either UL correct this aspect of its petition or that DOE specify that the authority extends only to small electric motors. NEMA further stated that, while it opposes the granting of the petition for these reasons, it supports the recognition of independent entities to assist in testing and certification of small electric motors and opposes any action that may reduce the options for certification. In NEMA's view, UL's petition could be reasonably considered only after the previously stated issues are addressed. (Comment response to the published Notice of Petition, No. 5, pp. 2, 5)

In reviewing NEMA's comments on the UL petition, and UL's responses to these comments, DOE finds no specific cause to reject UL's request for recognition as a nationally recognized certification program for small electric motors. This determination is based primarily on DOE's previous recognition of UL as a nationally recognized certification program for electric motors, the sampling and testing requirements for which are substantially the same. In regard to NEMA's specific comments regarding the requirement for adherence to UL's safety testing requirements and the proposed sampling requirements for small electric motors, DOE notes that these requirements are in addition to, and not in place of, the requirements for small electric motor testing and certification and do not represent a mandatory requirement from DOE's perspective. As UL correctly noted, manufacturers may choose not to participate in its program, and pursue certification through another process that does not involve its prescribed safety testing or follow-up audit and verification testing. Thus, a certification program may have such requirements in place without conflicting with the basic DOE requirements for certification. DOE also notes that such requirements already exist in UL's nationally recognized certification program for electric motors.

With respect to NEMA's general comment that the granting of UL's petition at this time would be premature due to the absence of certain definitions in subpart X to 10 CFR part 431, while DOE understands that a need may exist for greater clarification of certain aspects of the testing and certification requirements applicable to small electric motors, the absence of these definitions in Subpart X does not in itself preclude DOE from classifying UL's, or any other organization that presents sufficient documentation, pursuant to the requirements in § 431.447, that demonstrates that its program is capable of meeting, at a minimum, the testing and certification requirements in §§ 431.444 and 431.445. To the extent DOE finds that any of the certification requirements for small electric motors are not sufficiently clear, DOE will seek to provide further specificity through a future rulemaking or through guidance, as appropriate. In any case, UL or any other certification program recognized by DOE pursuant to § 431.448 must operate its certification program in conformance with any specific certifications requirements or guidance promulgated by DOE.

DOE also notes that NEMA's comment regarding the scope of UL's petition is correct in that the applicable section for small electric motors is § 431.445 rather than the cited requirements in § 431.17. While DOE declines to reject UL's petition solely on this basis, DOE confirms that the authority granted to UL under this interim determination extends only to testing and certification of small electric motors under subpart X of 10 CFR part 431.

The Department hereby announces its interim determination pursuant to 10 CFR 431.448(d) that UL is classified as a nationally recognized certification program for small electric motors, and will accept comments on this interim determination until October 17, 2013. Any person submitting written comments to DOE with respect to this interim determination must also, at the same time, send a copy of such comments to UL. As provided under § 431.448(c), UL may submit to the Department a written response to any such comments. After receiving any such comments and responses, the Department will issue a final determination on the UL Petition, in accordance with § 431.448(e) of 10 CFR part 431.

Issued in Washington, DC, on September 11, 2013.

**Kathleen B. Hogan,**

*Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.*

[FR Doc. 2013–22569 Filed 9–16–13; 8:45 am]

BILLING CODE 6450–01–P

[3] DOE notes that the CFR section UL cited in its petition addresses the requirements for determining the efficiency of electric motors. § 431.17(a) addresses general requirements applicable to all electric motors, and § 431.17(b) specifies sampling requirements applicable when a certification program is not used.

## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

**[Case No. RF–031]**

### Decision and Order Granting a Waiver to Panasonic Appliances Refrigeration Systems Corporation of America Corporation (PAPRSA) From the Department of Energy Residential Refrigerator and Refrigerator-Freezer Test Procedures

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Decision and order.

**SUMMARY:** The U.S. Department of Energy (DOE) gives notice of its decision and order (Case No. RF–031) granting Panasonic Appliances Refrigeration Systems Corporation of America (PAPRSA) a waiver from the DOE electric refrigerator and refrigerator-freezer test procedures for determining the energy consumption of residential refrigerator-freezers for the basic models set forth in its petition for waiver. Under today's decision and order, PAPRSA shall be required to test and rate its hybrid wine chiller/beverage center basic models using an alternate test procedure that requires PAPRSA to test the wine chiller compartment at 55 °F instead of the prescribed temperature of 38 °F. PAPRSA shall also use the K factor (correction factor) value of 0.85

when calculating the energy consumption.

**DATES:** This Decision and Order is effective September 17, 2013.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Bryan Berringer, U.S. Department of Energy, Building Technologies Office, Mailstop EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–0371, Email: *Bryan.Berringer@ee.doe.gov.*

Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0103. Telephone: (202) 586–8145. Email: *Michael.Kido@hq.doe.govmailto:.*

**SUPPLEMENTARY INFORMATION:** In accordance with Title 10 of the Code of Federal Regulations (10 CFR 430.27(l)), DOE gives notice of the issuance of its decision and order as set forth below. The decision and order grants PAPRSA a waiver from the applicable residential refrigerator and refrigerator-freezer test procedures found in 10 CFR part 430, subpart B, appendix A1 for certain basic models of hybrid wine chiller/beverage center products, provided that PAPRSA tests and rates such products using the alternate test procedure described in this notice. Today's decision prohibits PAPRSA from making representations concerning the energy efficiency of these products unless the product has been tested in a manner consistent with the provisions and restrictions in the alternate test procedure set forth in the decision and order below, and the representations fairly disclose the test results.

Distributors, retailers, and private labelers are held to the same standard when making representations regarding the energy efficiency of these products. 42 U.S.C. 6293(c).

Issued in Washington, DC, on September 11, 2013.

**Kathleen B. Hogan,**

*Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.*

## Decision and Order

*In the Matter of:*

Panasonic Appliances Refrigeration Systems Corporation of America (Case No. RF–031)

## I. Background and Authority

Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA), Public Law 94–163 (42 U.S.C. 6291–6309, as codified) established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances, which includes the residential electric refrigerators and refrigerator-freezers that are the focus of this notice.[1] Part B includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part B authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results that measure energy efficiency, energy use, or estimated operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for residential electric refrigerators and refrigerator-freezers is set forth in 10 CFR part 430, subpart B, appendix A1.

DOE's regulations for covered products contain provisions allowing a person to seek a waiver from the test procedure requirements for a particular basic model for covered consumer products when (1) the petitioner's basic model for which the petition for waiver was submitted contains one or more design characteristics that prevent testing according to the prescribed test procedure, or (2) when prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(a)(1). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption characteristics.

The Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). Waivers remain in effect pursuant to the provisions of 10 CFR 430.27(m).

Any interested person who has submitted a petition for waiver may also file an application for interim waiver of the applicable test procedure requirements. 10 CFR 430.27(a)(2). The Assistant Secretary will grant an interim waiver request if it is determined that the applicant will experience economic hardship if the interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver. 10 CFR 430.27(g).

[1] For editorial reasons, upon codification in the U.S. Code, Part B was re-designated Part A.

## II. PAPRSA's Petition for Waiver: Assertions and Determinations

On April 29, 2013, PAPRSA submitted a petition for waiver and application for interim waiver (petition) from the test procedure applicable to residential electric refrigerators and refrigerator-freezers set forth in 10 CFR Part 430, subpart B, appendix A1. In its petition, PAPRSA seeks a waiver from the existing DOE test procedure applicable to refrigerators and refrigerator-freezers under 10 CFR Part 430 for PAPRSA's hybrid models that consist of single-cabinet units with a refrigerated beverage compartment in the top portion and a wine storage compartment in the bottom of the units. DOE issued guidance that clarified the test procedures to be used for hybrid products such as the PAPRSA models at issue here: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/pdfs/refrigerator_definition_faq.pdf* This guidance specifies that basic models such as the ones PAPRSA identifies in its petition, which do not have a separate wine storage compartment with a separate exterior door, are to be tested according to the DOE test procedure in Appendix A1, with the temperatures specified therein. PAPRSA asserts that the wine storage compartment cannot be tested at the prescribed temperature of 38 °F, because the minimum compartment temperature is 45 °F. PAPRSA submitted an alternate test procedure to account for the energy consumption of its wine chiller/beverage centers. That alternate procedure would test the wine chiller compartment at 55 °F, instead of the prescribed 38 °F. To justify the use of this standardized temperature for testing, PAPRSA stated in its petition that it designed these models to provide an average temperature of 55 to 57 °F, which it determined is a commonly recommended temperature for wine storage, suggesting that this temperature is presumed to be representative of expected consumer use. 77 FR 19656. DOE notes that the test procedures for wine chillers adopted by the Association of Home Appliance Manufacturers (AHAM), California Energy Commission (CEC), and Natural Resources Canada all use a standardized compartment temperature of 55 °F for wine chiller compartments, which is consistent with PAPRSA's approach.

## III. Conclusion

After careful consideration of all the material submitted by PAPRSA, it is ordered that:

(1) The petition for waiver submitted by the Panasonic Appliances

Refrigeration Systems Corporation of America (Case No. RF–031) is hereby granted as set forth in the paragraphs below.

(2) PAPRSA shall be required to test and rate the following PAPRSA models according to the alternate test procedure set forth in paragraph (3) below.

SR5180JBC
JUB24FLARS0*
JUB24FRARS0*
JUB24FRACX0*

(3) PAPRSA shall be required to test the products listed in paragraph (2) above according to the test procedures for electric refrigerator-freezers prescribed by DOE at 10 CFR part 430, Appendix A1, except that, for the PAPRSA products listed in paragraph (2) only, test the wine chiller compartment at 55 °F, instead of the prescribed 38 °F.

PAPRSA shall also use the K factor (correction factor) value of 0.85 when calculating the energy consumption of one of the models listed above. Therefore, the energy consumption is defined by the higher of the two values calculated by the following two formulas (according to 10 CFR part 430, subpart B, Appendix A1):

Energy consumption of the wine compartment:

$$EWine = ET1 + [(ET2 - ET1) \times (55\ °F - TW1)/(TW2 - TW1)] * 0.85$$

Energy consumption of the refrigerated beverage compartment:

$$EBeverage\ Compartment = ET1 + [(ET2 - ET1) \times (38\ °F - TBC1)/(TBC2 - TBC1)].$$

(4) Representations. PAPRSA may make representations about the energy use of its hybrid wine chiller/beverage center products for compliance, marketing, or other purposes only to the extent that such products have been tested in accordance with the provisions outlined above and such representations fairly disclose the results of such testing.

(5) This waiver shall remain in effect consistent with the provisions of 10 CFR 430.27(m).

(6) This waiver is issued on the condition that the statements, representations, and documentary materials provided by the petitioner are valid. DOE may revoke or modify this waiver at any time if it determines the factual basis underlying the petition for waiver is incorrect, or the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

(7) This waiver applies only to those basic models set out in PAPRSA's April 29, 2013 petition for waiver. Grant of this waiver does not release a petitioner from the certification requirements set forth at 10 CFR part 429.

Issued in Washington, DC, on September 11, 2013.

Kathleen B. Hogan,
*Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable. Energy.*

[FR Doc. 2013–22582 Filed 9–16–13; 8:45 am]
BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

**[Case No. RF–032]**

### Notice of Petition for Waiver of Samsung Electronics America, Inc. From the Department of Energy Residential Refrigerator and Refrigerator-Freezer Test Procedure, and Grant of Interim Waiver

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Notice of petition for waiver, notice of grant of interim waiver, and request for comments.

**SUMMARY:** This notice announces receipt of a petition for waiver from Samsung Electronics America, Inc. (Samsung) regarding specified portions of the U.S. Department of Energy (DOE) test procedure for determining the energy consumption of electric refrigerators and refrigerator-freezers. In its petition, Samsung provides an alternate test procedure that is the same as the test procedure DOE published in a final rule setting out testing requirements for manufacturers to follow starting in 2014. DOE solicits comments, data, and information concerning Samsung's petition and the suggested alternate test procedure. Today's notice also grants Samsung an interim waiver from the electric refrigerator and refrigerator-freezer test procedure, subject to use of the alternative test procedure set forth in this notice.

**DATES:** DOE will accept comments, data, and information with respect to the Samsung Petition until October 17, 2013.

**ADDRESSES:** You may submit comments, identified by case number ''RF–032,'' by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: AS_Waiver_Requests@ee.doe.gov.* Include the case number (Case No. RF–032) in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, Mailstop EE–2J/1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Please submit one signed original paper copy.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Please submit one signed original paper copy.
- *Docket:* For access to the docket to review the background documents relevant to this matter, you may visit the U.S. Department of Energy, 950 L'Enfant Plaza SW., Washington, DC, 20024; (202) 586–2945, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Available documents include the following items: (1) This notice; (2) public comments received; (3) the petition for waiver and application for interim waiver; and (4) prior DOE waivers and rulemakings regarding similar refrigerator-freezer products. Please call Ms. Brenda Edwards at the above telephone number for additional information.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Bryan Berringer, U.S. Department of Energy, Building Technologies Office, Mail Stop EE–2J, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–0371. Email: *Bryan.Berringer@ee.doe.gov.*

Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0103. Telephone: (202) 586–8145. Email: *Michael.Kido@hq.doe.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background and Authority

Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA), Public Law 94–163 (42 U.S.C. 6291–6309, as codified), established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances, which includes the electric refrigerators and refrigerator-freezers that are the focus of this notice.[1] Part B includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part B authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce

[1] For editorial reasons, upon codification in the U.S. Code, Part B was re-designated Part A.

results which measure the energy efficiency, energy use, or estimated annual operating costs of a covered product, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for electric refrigerators and refrigerator-freezers is contained in 10 CFR part 430, subpart B, appendix A1.

The regulations set forth in 10 CFR part 430.27 contain provisions that enable a person to seek a waiver from the test procedure requirements for covered products. The Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) will grant a waiver if it is determined that the basic model for which the petition for waiver was submitted contains one or more design characteristics that prevents testing of the basic model according to the prescribed test procedures, or if the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(l). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption. The Assistant Secretary may grant the waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). Waivers remain in effect pursuant to the provisions of 10 CFR 430.27(m).

The waiver process also allows the Assistant Secretary to grant an interim waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 10 CFR 430.27(g). An interim waiver remains in effect for 180 days or until DOE issues its determination on the petition for waiver, whichever occurs earlier. DOE may extend an interim waiver for an additional 180 days. 10 CFR 430.27(h).

## II. Petition for Waiver of Test Procedure and Application for Interim Waiver

On August 2, 2013, Samsung submitted a petition for waiver from the test procedure applicable to residential electric refrigerators and refrigerator-freezers set forth in 10 CFR part 430, subpart B, appendix A1. Samsung is designing new refrigerator-freezers that incorporate multiple defrost cycles. In its petition, Samsung seeks a waiver from the existing DOE test procedure applicable to refrigerators and refrigerator-freezers under 10 CFR part 430 because the existing test procedure does not account for multiple defrost cycles. Therefore, Samsung has asked to use an alternate test procedure that is the same as the test procedure provisions for products with long time or variable defrost DOE published in a final rule (77 FR 3559, 3564–3565, January 25, 2012). These provisions were placed in appendix A, which is not required for use until September 15, 2014, and not contained in the current appendix A1 test procedure. Samsung has previously submitted similar petitions for waiver and requests for interim waiver for other basic models of refrigerator-freezers that incorporate multiple defrost cycles. DOE subsequently granted Samsung's waiver requests in each case. See 77 FR 1474 (Jan. 10, 2012), 77 FR 75428 (Dec. 20, 2012), 78 FR 35901 (June 14, 2013), and 78 FR 35898 (June 14, 2013).

Samsung also requests an interim waiver from the existing DOE test procedure. An interim waiver may be granted if it is determined that the applicant will experience economic hardship if the application for interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination of the petition for waiver. 10 CFR 430.27(g).

DOE has determined that Samsung's application for interim waiver does not provide sufficient market, equipment price, shipments and other manufacturer impact information to permit DOE to evaluate the economic hardship Samsung might experience absent a favorable determination on its application for interim waiver. DOE has determined, however, that it is likely Samsung's petition will be granted, and that it is desirable for public policy reasons to grant Samsung relief pending a determination on the petition. Previously, DOE granted a waiver to Samsung for other basic models incorporating multiple defrost technology and DOE has determined that it is desirable to have similar basic models tested in a consistent manner. See 77 FR 1474 (Jan. 10, 2012); 77 FR 75428 (Dec. 20, 2012); 78 FR 35901 (June 14, 2013); and 78 FR 35898 (June 14, 2013).

Samsung's petition included an alternate test procedure to account for the energy consumption of its refrigerator-freezer models with multiple defrost cycles. The alternate test procedure specified by Samsung is the same as the test procedure published in the final rule referenced above. The alternate test procedure specified in this interim waiver (as well as the previous waiver granted to Samsung) is identical to the test procedure provisions for products with long time or variable defrost adopted in the final test procedure rule that manufacturers of these products are required to use in 2014.

For the reasons stated above, DOE grants Samsung's application for interim waiver from testing of its refrigerator-freezer product line containing multiple defrost cycles. Therefore, *it is ordered that:*

The application for interim waiver filed by Samsung is hereby granted for the specified Samsung refrigerator-freezer basic model that incorporates multiple defrost cycles, subject to the specifications and conditions below. Samsung shall be required to test or rate the specified refrigerator-freezer product according to the alternate test procedure as set forth in section III, ''Alternate Test Procedure.''

The interim waiver applies to the following basic models:

RF28HM*LB**
RF28HM*DB**
RF28HF*DT**
RF28HF*DB**
RF23HC*DT**
RF23HC*DB**
RF25HM*DB**

DOE makes decisions on waivers and interim waivers for only those models specifically set out in the petition, not future models that may be manufactured by the petitioner. Samsung may submit a subsequent petition for waiver and request for grant of interim waiver, as appropriate, for additional models of refrigerator-freezers for which it seeks a waiver from the DOE test procedure. In addition, DOE notes that grant of an interim waiver or waiver does not release a petitioner from the certification requirements set forth at 10 CFR part 429.

Further, this interim waiver is conditioned upon the presumed validity of statements, representations, and documents provided by the petitioner. DOE may revoke or modify this interim waiver at any time upon a determination that the factual basis underlying the petition for waiver is incorrect, or upon a determination that the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

## III. Alternate Test Procedure

EPCA requires that manufacturers use DOE test procedures to make representations about the energy consumption and energy consumption costs of products covered by the statute.

(42 U.S.C. 6293(c)) Consistent representations are important for manufacturers to use in making representations about the energy efficiency of their products and to demonstrate compliance with applicable DOE energy conservation standards. Pursuant to its regulations applicable to waivers and interim waivers from applicable test procedures at 10 CFR 430.27, DOE will consider setting an alternate test procedure for Samsung in a subsequent Decision and Order.

During the period of the interim waiver granted in this notice, Samsung shall test the products listed above according to the test procedures for residential electric refrigerator-freezers prescribed by DOE at 10 CFR part 430, subpart B, appendix A1, except that, for the Samsung products listed above only, Samsung shall include the following:

1. In section 1, Definitions, the following definition:

''Defrost cycle type'' means a distinct sequence of control whose function is to remove frost and/or ice from a refrigerated surface. There may be variations in the defrost control sequence such as the number of defrost heaters energized. Each such variation establishes a separate distinct defrost cycle type. However, defrost achieved regularly during the compressor ''off'' cycles by warming of the evaporator without active heat addition is not a defrost cycle type.

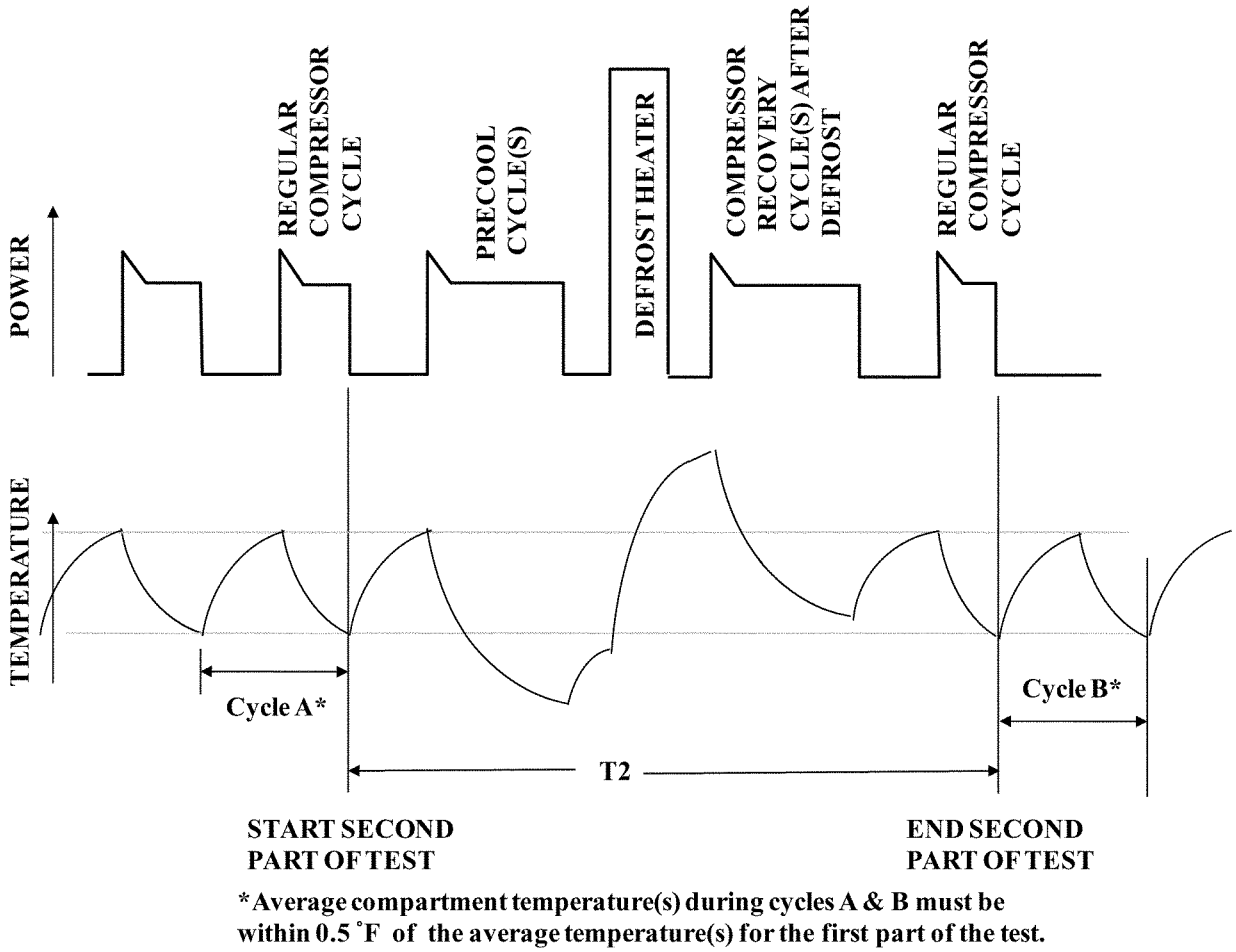
2. In section 4, Test Period, the following:

4.2.1 Long-time Automatic Defrost. If the model being tested has a long-time automatic defrost system, the two-part test described in this section may be used. The first part is a stable period of compressor operation that includes no portions of the defrost cycle, such as precooling or recovery, that is otherwise the same as the test for a unit having no defrost provisions (section 4.1). The second part is designed to capture the energy consumed during all of the events occurring with the defrost control sequence that are outside of stable operation.

4.2.1.1 Cycling Compressor System. For a system with a cycling compressor, the second part of the test starts at the termination of the last regular compressor ''on'' cycle. The average temperatures of the fresh food and freezer compartments measured from the termination of the previous compressor ''on'' cycle to the termination of the last regular compressor ''on'' cycle must both be within 0.5 °F (0.3 °C) of their average temperatures measured for the first part of the test. If any compressor cycles occur prior to the defrost heater being energized that cause the average temperature in either compartment to deviate from its average temperature for the first part of the test by more than 0.5 °F (0.3 °C), these compressor cycles are not considered regular compressor cycles and must be included in the second part of the test. As an example, a ''precooling'' cycle, which is an extended compressor cycle that lowers the temperature(s) of one or both compartments prior to energizing the defrost heater, must be included in the second part of the test. The test period for the second part of the test ends at the termination of the first regular compressor ''on'' cycle after both compartment temperatures have fully recovered to their stable conditions. The average temperatures of the compartments measured from this termination of the first regular compressor ''on'' cycle until the termination of the next regular compressor ''on'' cycle must both be within 0.5 °F (0.3 °C) of their average temperatures measured for the first part of the test. See Figure 1.

Figure 1

Long-time Automatic Defrost Diagram for Cycling Compressors




***Average compartment temperature(s) during cycles A & B must be within 0.5 °F of the average temperature(s) for the first part of the test.**

4.2.4 Systems with Multiple Defrost Frequencies. This section applies to models with long-time automatic or variable defrost control with multiple defrost cycle types, such as models with single compressors and multiple evaporators in which the evaporators have different defrost frequencies. The two-part method in 4.2.1 shall be used. The second part of the method will be conducted separately for each distinct defrost cycle type.

3. In section 5, Test Measurements, the following:

5.2.1.5 Long-time or Variable Defrost Control for Systems with Multiple Defrost cycle Types. The energy consumption in kilowatt-hours per day shall be calculated equivalent to:

$$ET = (1440 \text{ x } EP1/T1) + \sum_{i=1}^{D} [(EP2_i - (EP1 \text{ x } T2_i/T1)) \text{ x } (12/CT_i)]$$

*Where:*

1440 is defined in 5.2.1.1 and EP1, T1, and 12 are defined in 5.2.1.2;

i is a variable that can equal 1, 2, or more that identifies the distinct defrost cycle types applicable for the refrigerator or refrigerator-freezer;

$EP2_i$ = energy expended in kilowatt-hours during the second part of the test for defrost cycle type i;

$T2_i$ = length of time in minutes of the second part of the test for defrost cycle type i;

$CT_i$ is the compressor run time between instances of defrost cycle type i, for long-time automatic defrost control equal to a fixed time in hours rounded to the nearest tenth of an hour, and for variable defrost control equal to $(CT_{Li} \times CT_{Mi})/(F \times (CT^{-}_{Mi}\ CT_{Li}) + CT_{Li})$;

$CT_{Li}$ = least or shortest compressor run time between instances of defrost cycle type i in hours rounded to the nearest tenth of an hour ($CT_L$ for the defrost cycle type with the longest compressor run time between defrosts must be greater than or equal to 6 but less than or equal to 12 hours);

$CT_{Mi}$ = maximum compressor run time between instances of defrost cycle type i in hours rounded to the nearest tenth of an hour (greater than $CT_{Li}$ but not more than 96 hours);

For cases in which there are more than one fixed CT value (for long-time defrost models) or more than one $CT_M$ and/or $CT_L$ value (for variable defrost models)

for a given defrost cycle type, an average fixed CT value or average $CT_M$ and $CT_L$ values shall be selected for this cycle type so that 12 divided by this value or values is the frequency of occurrence of the defrost cycle type in a 24 hour period, assuming 50% compressor run time.

F = default defrost energy consumption factor, equal to 0.20.

For variable defrost models with no values for $CT_{Li}$ and $CT_{Mi}$ in the algorithm, the default values of 6 and 96 shall be used, respectively.

D is the total number of distinct defrost cycle types.

## IV. Summary and Request for Comments

Through today's notice, DOE announces receipt of Samsung's petition for waiver from certain parts of the test procedure applicable to refrigerator-freezers and grants an interim waiver to Samsung. DOE is publishing Samsung's petition for waiver in its entirety pursuant to 10 CFR 430.27(b)(1)(iv). The petition contains no confidential information. The petition includes a suggested alternate test procedure to measure the energy consumption of refrigerator-freezer basic models that incorporate multiple defrost cycles.

DOE solicits comments from interested parties on all aspects of the petition. Pursuant to 10 CFR 430.27(b)(1)(iv), any person submitting written comments to DOE must also send a copy of such comments to the petitioner. The contact information for the petitioner is: Michael Moss, Director of Corporate Environmental Affairs, Samsung Electronics America, Inc., 19 Chapin Road, Building D, Pine Brook, NJ 07058. All submissions received must include the agency name and case number for this proceeding. Submit electronic comments in WordPerfect, Microsoft Word, Portable Document Format (PDF), or text (American Standard Code for Information Interchange (ASCII)) file format and avoid the use of special characters or any form of encryption. Wherever possible, include the electronic signature of the author. DOE does not accept telefacsimiles (faxes).

Issued in Washington, DC, on September 11, 2013.

**Kathleen B. Hogan,**

*Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.*

August 2, 2013

Dr. David Danielson
Energy Efficiency and Renewable Energy
Department of Energy
1000 Independence Avenue SW.
Washington, DC 20585

Dear Assistant Secretary Danielson:

Samsung Electronics America, Inc. (''Samsung'') respectfully submits this Application for Interim Waiver and Petition for Waiver to the Department of Energy (''DOE'' or ''the Department'') for Samsung's compressor refrigerator-freezers with multiple defrost cycles.

**Reasoning**

10 CFR Part 430.27(a)(1) allows a person to submit a petition to waive for a particular basic model any requirements of § 430.23 upon the grounds that the basic model contains one or more design characteristics which either prevent testing of the basic model according to the prescribed test procedures, or the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data.

Current test procedures as prescribed in Appendix A1 to Subpart B of Part 430 (''Appendix A1'') do not adequately provide a way for Samsung to accurately represent the energy consumption of its refrigerator-freezers with multiple defrost cycles. DOE concurred with Samsung's understanding in the interim waiver granted to Samsung in 76 FR 16760 [2] and subsequently granted the waiver on January 10, 2012 (77 FR 1474). Additionally, DOE communicated that all manufacturers planning on marketing refrigerator-freezers with multiple defrost cycles must seek a waiver from the Department.[3]

For the reasons that DOE described in its granting of waiver (77 FR 1474) for Samsung refrigerator freezers with multiple defrost cycles, Samsung believes that the granting of Interim Waiver and Waiver for the models listed below are warranted.

**Request**

Samsung requests that the alternate test procedure for refrigerators with multiple defrost cycles, as prescribed in the waiver (77 FR 1474) and in the interim waiver (77 FR 13109) granted to Samsung, be granted for the following basic Samsung refrigerator-freezers with multiple defrost cycles models:

RF28HM*LB**
RF28HM*DB**
RF28HF*DT**
RF28HF*DB**
RF23HC*DT**
RF23HC*DB**
RF25HM*DB**

Please feel free to contact me if you have any questions regarding this Petition for Waiver and Application for Interim Waiver. I will be happy to discuss should any questions arise.

Sincerely,

Michael Moss,

*Director of Corporate Environmental Affairs.*

[FR Doc. 2013–22558 Filed 9–16–13; 8:45 am]

BILLING CODE 6450–01–P

[2] DOE understands, however, that absent an interim waiver, Samsung's products would not be accurately tested and rated for energy consumption because the current energy test procedure does not include test procedures for products with multiple defrost cycle types.

[3] Until these amendments are required in conjunction with the 2014 standards, manufacturers introducing products equipped with multiple defrost cycle types should, consistent with 10 CFR 430.27, petition for a waiver since the modified version of Appendix A1 set out in today's notice will not include a specified method for capturing this energy usage.

## 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:* CP13–545–000.
*Applicants:* Dominion Transmission, Inc.
*Description:* Joint Application (Abandonment of Ellisburg to Leidy Capacity Lease).
*Filed Date:* 9/6/13.
*Accession Number:* 20130906–5138.
*Comments Due:* 5 p.m. ET 9/23/13.

*Docket Numbers:* RP13–1318–000.
*Applicants:* Algonquin Gas Transmission, LLC.
*Description:* Negotiated Rate Cleanup—Name Change for Contract 510694 to be effective 10/9/2013.
*Filed Date:* 9/9/13.
*Accession Number:* 20130909–5136.
*Comments Due:* 5 p.m. ET 9/23/13.

*Docket Numbers:* RP13–1319–000.
*Applicants:* Destin Pipeline Company, L.L.C.
*Description:* Destin Pipeline Company, L.L.C. submits tariff filing per 154.204: Changes to Sections 6.2 & 7.4 to be effective 10/10/2013.
*Filed Date:* 9/9/13.
*Accession Number:* 20130909–5373.
*Comments Due:* 5 p.m. ET 9/23/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For

other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 10, 2013.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2013–22519 Filed 9–16–13; 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:* ER10–1257–003; ER10–1258–003.

*Applicants:* Wabash Valley Power Association, Inc., Wabash Valley Energy Marketing, Inc.

*Description:* Notice of Non Material Change in Status of Wabash Valley Power Association, Inc., et al.

*Filed Date:* 9/9/13.

*Accession Number:* 20130909–5422.

*Comments Due:* 5 p.m. ET 9/30/13.

*Docket Numbers:* ER10–2193–001.

*Applicants:* H.Q. Energy Services (U.S.) Inc.

*Description:* Informational Filing Related to Regulatory Proceedings in Quebec.

*Filed Date:* 6/25/12.

*Accession Number:* 20120625–5193.

*Comments Due:* 5 p.m. ET 10/1/13.

*Docket Numbers:* ER10–2193–002.

*Applicants:* H.Q. Energy Services (U.S.) Inc.

*Description:* Supplement to June 25, 2012 Informational Filing Related to Regulatory Proceedings in Quebec.

*Filed Date:* 1/17/2013.

*Accession Number:* 20130117–5200.

*Comments Due:* 5 p.m. ET 10/1/13.

*Docket Numbers:* ER11–2780–015.

*Applicants:* Safe Harbor Water Power Corporation.

*Description:* Notice of Change in Status of Safe Harbor Water Power Corporation.

*Filed Date:* 9/9/13.

*Accession Number:* 20130909–5420.

*Comments Due:* 5 p.m. ET 9/30/13.

*Docket Numbers:* ER12–1265–005.

*Applicants:* Midcontinent Independent System Operator, Inc.

*Description:* Midcontinent Independent System Operator, Inc. submits 09–09–2013 Order 719 Compliance Filing to be effective 6/12/2012.

*Filed Date:* 9/9/13.

*Accession Number:* 20130909–5375.

*Comments Due:* 5 p.m. ET 9/30/13.

*Docket Numbers:* ER13–1657–000.

*Applicants:* New England Power Company.

*Description:* New England Power Company submits Refund Report Regarding Interconnection Agreements with Wheelabrator Saugus to be effective N/A.

*Filed Date:* 9/9/13.

*Accession Number:* 20130909–5294.

*Comments Due:* 5 p.m. ET 9/30/13.

*Docket Numbers:* ER13–2157–001.

*Applicants:* Midcontinent Independent System Operator, Inc.

*Description:* 09–09–2013 SA 2289 Ameren-Hoopeston Wind Errata to be effective 8/15/2013.

*Filed Date:* 9/9/13.

*Accession Number:* 20130909–5061.

*Comments Due:* 5 p.m. ET 9/30/13.

*Docket Numbers:* ER13–2358–000.

*Applicants:* Southwest Power Pool, Inc.

*Description:* Southwest Power Pool, Inc. submits Removal of Exception to Provisions of Attachment L, Section VI to be effective 11/8/2013.

*Filed Date:* 9/9/13.

*Accession Number:* 20130909–5282.

*Comments Due:* 5 p.m. ET 9/30/13.

*Docket Numbers:* ER13–2359–000.

*Applicants:* Southwest Power Pool, Inc.

*Description:* Southwest Power Pool, Inc. submits 1637R1 Kansas Electric Power Cooperative, Inc. NITSA and NOA to be effective 6/1/2013.

*Filed Date:* 9/9/13.

*Accession Number:* 20130909–5311.

*Comments Due:* 5 p.m. ET 9/30/13.

*Docket Numbers:* ER13–2360–000.

*Applicants:* UGI Utilities Inc., PJM Interconnection, L.L.C.

*Description:* UGI Utilities Inc. submits UGI submits corrections to formula rate template—PJM OATT Att H–8C & H–8E to be effective 11/9/2013.

*Filed Date:* 9/9/13.

*Accession Number:* 20130909–5361.

*Comments Due:* 5 p.m. ET 9/30/13.

*Docket Numbers:* ER13–2361–000.

*Applicants:* NSTAR Electric Company.

*Description:* NSTAR Electric Company submits MBTA Interconnection Agreement to be effective 9/1/2013.

*Filed Date:* 9/9/13.

*Accession Number:* 20130909–5371.

*Comments Due:* 5 p.m. ET 9/30/13.

*Docket Numbers:* ER13–2362–000.

*Applicants:* Duke Energy Progress, Inc.

*Description:* Duke Energy Progress, Inc. submits Cancellation of Duke Energy Progress, Inc. Cost-Based Rates Tariff to be effective 11/9/2013.

*Filed Date:* 9/10/13.

*Accession Number:* 20130910–5040.

*Comments Due:* 5 p.m. ET 10/1/13.

*Docket Numbers:* ER13–2363–000.

*Applicants:* Duke Energy Progress, Inc.

*Description:* Duke Energy Progress, Inc. submits CBR Name Change to be effective 11/9/2013.

*Filed Date:* 9/10/13.

*Accession Number:* 20130910–5041.

*Comments Due:* 5 p.m. ET 10/1/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 10, 2013.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2013–22524 Filed 9–16–13; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC13–144–000.

*Applicants:* Dynegy Danskammer, L.L.C.

*Description:* Application For Approval Under Section 203 of the Federal Power Act and Request for Expedited Action of Dynegy Danskammer, L.L.C.

*Filed Date:* 9/9/13.

*Accession Number:* 20130909–5257.

*Comments Due:* 5 p.m. ET 9/30/13.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER10–1107–004.

*Applicants:* Pacific Gas and Electric Company.

*Description:* Notice of Non-Material Change in Status of Pacific Gas and Electric Company.

*Filed Date:* 9/6/13.

*Accession Number:* 20130906–5190.

*Comments Due:* 5 p.m. ET 9/27/13.

*Docket Numbers:* ER10–1569–005; ER12–21–010; ER10–2783–006; ER10–2784–006; ER11–2855–010; ER10–2791–006; ER10–2792–006; ER10–1564–006; ER10–1565–006; ER10–2795–006; ER10–2798–006; ER10–1575–004; ER10–2799–006; ER10–2801–006; ER11–3727–006; ER10–1566–006; ER12–2413–004; ER11–2062–006; ER10–2812–005; ER10–1291–007; ER10–2843–004; ER11–2508–005; ER11–2863–004; ER11–4307–006; ER12–1711–006; ER10–2846–006; ER12–261–005; ER10–2871–004; ER13–1136–004; ER10–2875–006; ER10–1568–006; ER10–1581–008; ER10–2876–006; ER10–2878–006; ER10–2879–006; ER10–2880–006; ER10–2888–006; ER13–1745–001; ER13–1803–002; ER13–1788–001; ER13–1789–001; ER13–1790–002; ER10–2896–006; ER10–2913–006; ER13–1791–001; ER13–1792–001; ER13–1746–002; ER10–2914–006; ER13–1799–001; ER13–1801–001; ER13–1802–001; ER10–2916–006; ER10–2915–006; ER12–1525–006; ER12–2019–005; ER10–1582–005; ER12–2398–005; ER11–3459–005; ER10–2931–006; ER13–1965–001; ER10–2969–006; ER11–4308–006; ER11–2805–005; ER10–3143–007; ER10–1580–008; ER11–2856–010; ER13–2107–001; ER13–2020–001; ER13–2050–001; ER11–2857–010; ER10–2947–006.

*Applicants:* NRG Power Marketing LLC, NRG Power Marketing LLC Agua Caliente Solar, LLC, Arthur Kill Power LLC, Astoria Gas Turbine Power LLC, Avenal Park LLC, Bayou Cove Peaking Power LLC, Big Cajun I Peaking Power LLC, Cabrillo Power I LLC, Cabrillo Power II LLC, Conemaugh Power LLC, Connecticut Jet Power LLC, Cottonwood Energy Company LP, Devon Power LLC, Dunkirk Power LLC, El Segundo Energy Center LLC, El Segundo Power, LLC, Energy Alternatives Wholesale, LLC, Energy Plus Holdings LLC, GenConn Devon LLC, GenConn Energy LLC, GenConn Middletown LLC, GenOn Energy Management, LLC, GenOn Mid-Atlantic, LLC, Green Mountain Energy Company, High Plains Ranch II, LLC, Huntley Power LLC, Independence Energy Group LLC, Indian River Power LLC, Ivanpah Master Holdings, LLC, Keystone Power LLC, Long Beach Generation LLC, Long Beach Peakers LLC, Louisiana Generating LLC, Middletown Power LLC, Montville Power LLC, NEO Freehold-Gen LLC, Norwalk Power LLC, NRG Bowline, LLC, NRG California South LP, NRG Canal LLC, NRG Chalk Point LLC, NRG Delta LLC, NRG Energy Center Dover LLC, NRG Energy Center Paxton LLC, NRG Florida LP, NRG Kendall LLC, NRG Marsh Landing LLC, NRG New Jersey Energy Sales LLC, NRG Potomac River LLC, NRG Power Midwest LP, NRG REMA LLC, NRG Rockford LLC, NRG Rockford II LLC, NRG Solar Alpine LLC, NRG Solar Avra Valley LLC, NRG Solar Blythe LLC, NRG Solar Borrego I LLC, NRG Solar Roadrunner LLC, NRG Sterlington Power LLC, NRG Wholesale Generation LP, Oswego Harbor Power LLC, Reliant Energy Northeast LLC, RRI Energy Services, LLC, Sabine Cogen, LP, Saguaro Power Company, A Limited Partnership, Sand Drag LLC, Solar Partners I, LLC, Solar Partners II, LLC, Solar Partners VIII, LLC, Sun City Project, Vienna Power LLC

*Description:* Notice of Non-Material Change in Status of NRG MBR Entities et al.

*Filed Date:* 9/6/13.

*Accession Number:* 20130906–5203.

*Comments Due:* 5 p.m. ET 9/27/13.

*Docket Numbers:* ER10–2719–015; ER10–2718–015; ER10–2633–015; ER10–2570–015; ER10–2717–015; ER10–3140–015; ER13–55–005; ER12–911–005.

*Applicants:* East Coast Power Linden Holding, L.L.C., Cogen Technologies Linden Venture, L.P., Birchwood Power Partners, L.P., Shady Hills Power Company, L.L.C., EFS Parlin Holdings, LLC, Inland Empire Energy Center, LLC, Homer City Generation, L.P., CPV Sentinel, LLC

*Description:* Notice of Non-Material Change in Status of the GE Companies.

*Filed Date:* 9/9/13.

*Accession Number:* 20130909–5154.

*Comments Due:* 5 p.m. ET 9/30/13.

*Docket Numbers:* ER12–1650–004.

*Applicants:* Maine Public Service Company.

*Description:* Maine Public Service Company submits Compliance Filing to be effective 7/1/2012.

*Filed Date:* 9/9/13.

*Accession Number:* 20130909–5071.

*Comments Due:* 5 p.m. ET 9/30/13.

*Docket Numbers:* ER13–1346–000.

*Applicants:* Mesa Wind Power Corporation.

*Description:* Mesa Wind Refund Report to be effective N/A.

*Filed Date:* 9/6/13.

*Accession Number:* 20130906–5080.

*Comments Due:* 5 p.m. ET 9/27/13.

*Docket Numbers:* ER13–1654–001.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* PJM Interconnection, L.L.C. submits Compliance filing per August 9, 2013 Order in ER13–1654–000 to be effective 8/9/2013.

*Filed Date:* 9/6/13.

*Accession Number:* 20130906–5176.

*Comments Due:* 5 p.m. ET 9/27/13.

*Docket Numbers:* ER13–1746–003.

*Applicants:* NRG Marsh Landing LLC.

*Description:* NRG Marsh Landing LLC submits Amendment to Notice of Succession to be effective 6/24/2013.

*Filed Date:* 9/9/13.

*Accession Number:* 20130909–5262.

*Comments Due:* 5 p.m. ET 9/30/13.

*Docket Numbers:* ER13–1865–002.

*Applicants:* Tesoro Refining & Marketing Company LLC.

*Description:* Tesoro Refining & Marketing Company LLC submits TSO—Second Amended MBR Filing to be effective 7/30/2013.

*Filed Date:* 9/9/13.

*Accession Number:* 20130909–5045.

*Comments Due:* 5 p.m. ET 9/30/13.

*Docket Numbers:* ER13–2336–000.

*Applicants:* Portland General Electric Company.

*Description:* Portland General Electric Company submits Order No. 764 Compliance Filing to be effective 11/12/2013.

*Filed Date:* 9/6/13.

*Accession Number:* 20130906–5183.

*Comments Due:* 5 p.m. ET 9/27/13.

*Docket Numbers:* ER13–2338–000.

*Applicants:* NorthWestern Corporation.

*Description:* NorthWestern Corporation submits SA 691—Gallatin County—East Belgrade Interchange to be effective 9/9/2013.

*Filed Date:* 9/6/13.

*Accession Number:* 20130906–5186.

*Comments Due:* 5 p.m. ET 9/27/13.

*Docket Numbers:* ER13–2339–000.

*Applicants:* Entergy Arkansas, Inc.

*Description:* Entergy Arkansas, Inc. submits EAI Amended MBR Tariff for MISO to be effective 12/19/2013.

*Filed Date:* 9/9/13.

*Accession Number:* 20130909–5000.

*Comments Due:* 5 p.m. ET 9/30/13.

*Docket Numbers:* ER13–2340–000.

*Applicants:* Entergy Gulf States Louisiana, L.L.C.

*Description:* Entergy Gulf States Louisiana, L.L.C. submits EGSL Amended MBR Tariff for MISO to be effective 12/19/2013.

*Filed Date:* 9/9/13.

*Accession Number:* 20130909–5001.

*Comments Due:* 5 p.m. ET 9/30/13.

*Docket Numbers:* ER13–2341–000.

*Applicants:* Entergy Louisiana, LLC.

*Description:* Entergy Louisiana, LLC submits ELL Amended MBR Tariff for MISO to be effective 12/19/2013.

*Filed Date:* 9/9/13.

*Accession Number:* 20130909–5002.
*Comments Due:* 5 p.m. ET 9/30/13.

*Docket Numbers:* ER13–2342–000.
*Applicants:* Entergy Mississippi, Inc.
*Description:* Entergy Mississippi, Inc. submits EMI Amended MBR Tariff for MISO to be effective 12/19/2013.
*Filed Date:* 9/9/13.
*Accession Number:* 20130909–5003.
*Comments Due:* 5 p.m. ET 9/30/13.

*Docket Numbers:* ER13–2343–000.
*Applicants:* Entergy New Orleans, Inc.
*Description:* Entergy New Orleans, Inc. submits ENOI Amended MBR Tariff for MISO to be effective 12/19/2013.
*Filed Date:* 9/9/13.
*Accession Number:* 20130909–5004.
*Comments Due:* 5 p.m. ET 9/30/13.

*Docket Numbers:* ER13–2344–000.
*Applicants:* Entergy Texas, Inc.
*Description:* Entergy Texas, Inc. submits ETI Amended MBR Tariff for MISO to be effective 12/19/2013.
*Filed Date:* 9/9/13.
*Accession Number:* 20130909–5005.
*Comments Due:* 5 p.m. ET 9/30/13.

*Docket Numbers:* ER13–2345–000.
*Applicants:* Entergy Nuclear Palisades, LLC.
*Description:* Entergy Nuclear Palisades, LLC submits ENP Amended MBR Tariff for MISO to be effective 12/19/2013.
*Filed Date:* 9/9/13.
*Accession Number:* 20130909–5006.
*Comments Due:* 5 p.m. ET 9/30/13.

*Docket Numbers:* ER13–2346–000.
*Applicants:* EWO Marketing, LLC.
*Description:* EWO Marketing, LLC submits EWOM Amended MBR Tariff for MISO to be effective 12/19/2013.
*Filed Date:* 9/9/13.
*Accession Number:* 20130909–5007.
*Comments Due:* 5 p.m. ET 9/30/13.

*Docket Numbers:* ER13–2347–000.
*Applicants:* Llano Estacado Wind, LLC.
*Description:* Llano Estacado Wind, LLC submits LEW Amended MBR Tariff for MISO to be effective 12/19/2013 under ER13–2347. Filing Type: 30.
*Filed Date:* 9/9/13.
*Accession Number:* 20130909–5008.
*Comments Due:* 5 p.m. ET 9/30/13.

*Docket Numbers:* ER13–2348–000.
*Applicants:* Northern Iowa Windpower, LLC.
*Description:* Northern Iowa Windpower, LLC submits NIW Amended MBR Tariff for MISO to be effective 12/19/2013.
*Filed Date:* 9/9/13.
*Accession Number:* 20130909–5009.
*Comments Due:* 5 p.m. ET 9/30/13.

*Docket Numbers:* ER13–2349–000.
*Applicants:* EAM Nelson Holding, LLC.
*Description:* EAM Nelson Holding, LLC submits EAM Nelson MBR Application to be effective 12/19/2013.
*Filed Date:* 9/9/13.
*Accession Number:* 20130909–5010.
*Comments Due:* 5 p.m. ET 9/30/13.

*Docket Numbers:* ER13–2350–000.
*Applicants:* RS Cogen, LLC.
*Description:* RS Cogen, LLC submits RS Cogen MBR Application to be effective 12/19/2013.
*Filed Date:* 9/9/13.
*Accession Number:* 20130909–5011.
*Comments Due:* 5 p.m. ET 9/30/13.

*Docket Numbers:* ER13–2351–000.
*Applicants:* Entergy Power, LLC.
*Description:* Entergy Power, LLC submits EPL Amended MBR Tariff for MISO to be effective 12/19/2013.
*Filed Date:* 9/9/13.
*Accession Number:* 20130909–5012.
*Comments Due:* 5 p.m. ET 9/30/13.

*Docket Numbers:* ER13–2352–000.
*Applicants:* Duke Energy Florida, Inc.
*Description:* Duke Energy Florida, Inc. submits Cancellation of Duke Energy Florida, Inc. Rate Schedule No. 176 to be effective 12/31/2013.
*Filed Date:* 9/9/13.
*Accession Number:* 20130909–5049.
*Comments Due:* 5 p.m. ET 9/30/13.

*Docket Numbers:* ER13–2353–000.
*Applicants:* Duke Energy Florida, Inc.
*Description:* Duke Energy Florida, Inc. submits Cancellation of Duke Energy Florida Rate Schedule No. 106 to be effective 12/31/2013.
*Filed Date:* 9/9/13.
*Accession Number:* 20130909–5050.
*Comments Due:* 5 p.m. ET 9/30/13.

*Docket Numbers:* ER13–2354–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* PJM Interconnection, L.L.C. submits First Revised Service Agreement No. 3452; Queue No. Y1–020 to be effective 8/8/2013.
*Filed Date:* 9/9/13.
*Accession Number:* 20130909–5069.
*Comments Due:* 5 p.m. ET 9/30/13.

*Docket Numbers:* ER13–2355–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* PJM Interconnection, L.L.C. submits Original Service Agreement No. 3639—Queue Position W4–038 to be effective 8/8/2013.
*Filed Date:* 9/9/13.
*Accession Number:* 20130909–5077.
*Comments Due:* 5 p.m. ET 9/30/13.

*Docket Numbers:* ER13–2356–000.
*Applicants:* Midcontinent Independent System Operator, Inc.
*Description:* Midcontinent Independent System Operator, Inc. submits 09–09–2013 Att O ATXI Annual Rate Clean-Up to be effective 9/10/2013.
*Filed Date:* 9/9/13.
*Accession Number:* 20130909–5163.
*Comments Due:* 5 p.m. ET 9/30/13.

*Docket Numbers:* ER13–2357–000.
*Applicants:* ECP Energy I, LLC.
*Description:* ECP Energy I, LLC submits Cancellation to be effective 9/30/2013.
*Filed Date:* 9/9/13.
*Accession Number:* 20130909–5172.
*Comments Due:* 5 p.m. ET 9/30/13.

Take notice that the Commission received the following electric securities filings:

*Docket Numbers:* ES13–53–000.
*Applicants:* Kentucky Utilities Company.
*Description:* Application of Kentucky Utilities Company under Section 204 of the Federal Power Act for Authority to Issue Short-Term Debt Securities.
*Filed Date:* 9/6/13.
*Accession Number:* 20130906–5193.
*Comments Due:* 5 p.m. ET 9/27/13.

*Docket Numbers:* ES13–54–000.
*Applicants:* Louisville Gas & Electric Company.
*Description:* Application of Louisville Gas and Electric Company under Section 204 of the Federal Power Act for Authority to Issue Short-Term Debt Securities.
*Filed Date:* 9/6/13.
*Accession Number:* 20130906–5194.
*Comments Due:* 5 p.m. ET 9/27/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 9, 2013.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2013–22518 Filed 9–16–13; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EL13–83–000]**

### Midcontinent Independent System Operator, Inc.; Notice of Initiation of Proceeding and Refund Effective Date

On September 9, 2013, the Commission issued an order that initiated a proceeding in Docket No. EL13–83–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e (2006), to determine the justness and reasonableness of the proposed revisions to Schedules 7, 8, and 9 of Midcontinent Independent System Operator, Inc.'s existing tariff. *Prairie Power, Inc., et al.,* 144 FERC ¶ 61,193 (2013).

The refund effective date in Docket No. EL13–83–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Dated: September 10, 2013.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2013–22520 Filed 9–16–13; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project Nos. 14540–000 and 14539–000]**

### Western Minnesota Municipal Power Agency, Lock+™ Hydro Friends Fund III, LLC; Notice of Competing Preliminary Permit Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On July 23, 2013, Western Minnesota Municipal Power Agency (Western Minnesota) and Lock+™ Hydro Friends Fund III, LLC (Hydro Friends) filed preliminary permit applications, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of a hydropower project at the existing U.S. Army Corps of Engineers' (Corps) Melvin Price Lock and Dam, located on the Mississippi River near the City of Alton, Illinois, in Madison County, Illinois, and St. Charles County, Missouri. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

Western Minnesota's proposed Melvin Price Lock and Dam Hydroelectric Project No. 14540–000 would consist of: (1) Six 110-foot-wide, approximately 110-foot-long steel structures placed immediately downstream of the existing tainter gates 4 through 9 (one steel structure per gate) containing arrays of micro-turbines and pinned between new 60-foot-long, 72-foot-high concrete piers extending downstream of the existing piers; (2) a 150-foot by 150-foot substation located next to the dam on the Missouri side of the river that would step-up the project voltage from 13.8 kilovolts (kV) to 138 kV; (3) a 138 kV, 1.07-miles-long transmission line connecting the project substation to an existing substation on the Illinois side of the river; and (4) appurtenant facilities. Western Minnesota has not decided on a micro-turbine supplier but states that the capacity of the project would be based on an established flow and head condition. At a mean water head of 14.7 feet and a flow of 72,600 cubic feet per second (cfs) flowing through the project, each steel structure assembly would produce 15.5 megawatts (MW) resulting in a project rated capacity of 93.0 MW. At a maximum operating head of 20.0 feet, the anticipated flow through the project would be 85,800 cfs producing 24.9 MW per steel structure assembly or 149.4 MW for the project. The estimated average annual generation would be 445.4 gigawatt-hours. The project would occupy 16 acres of Federal Lands owned by the Corps, and operate run-of-river.

*Applicant contact:* Mr. Raymond J. Wahle, P.E., Missouri River Energy Services, 3724 W. Avera Drive, P.O. Box 88920, Sioux Falls, SD 57109. Phone: (605) 330–6963.

Hydro Friends' Melvin Price Locks and Dam Hydroelectric Project No. 14539–000 would consist of: (1) A 750-foot-long, 22-foot-wide, 66-foot-high Large Frame Module (LFM) enclosed in a powerhouse and containing 50 turbines each having a diameter of 8 feet and a nameplate capacity of 1.5 MW for a total system capacity of 75 MW; (2) flow control door assemblies installed in front of the LFM that can close off flow in case a suspension of generation is required; (3) a 750-foot-wide, 550-foot-long tailrace; (4) a 69 kV or 115 kV, 4.8-miles-long transmission line connecting the project power to an existing substation; and (5) appurtenant facilities. The estimated average annual generation would be 427,050 gigawatt-hours. The project would occupy Federal Lands owned by the Corps, and operate run-of-river.

*Applicant contact:* Mr. Mark R. Stover, Vice President, Corporate Affairs, Hydro Green Energy, LLC, 900 Oakmont Lane, Suite 301, Westmont, IL 60559. Phone: (877) 556–6566, extension 711.

*FERC contact:* Sergiu Serban, *sergiu.serban@ferc.gov.* Phone: (202) 502–6211.

*Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications:* 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–14540–000 and P–14539–000.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14540–000, or P–14539–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: September 11, 2013.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2013–22576 Filed 9–16–13; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OW–2008–0719, FRL–9901–07–OW]**

## Agency Information Collection Activities; Proposed Collection; Request for Comments on Three Proposed Information Collection Requests

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

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA), this notice announces that the Environmental Protection Agency (EPA) is planning to submit a request to renew three existing Information Collection Requests (ICRs) to the Office of Management and Budget (OMB). Before submitting the ICRs to OMB for review and approval, EPA is soliciting comments on specific aspects of the information collections as described at the beginning of Supplementary Information.

**DATES:** Comments must be submitted on or before November 18, 2013.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–OW–2008–0719, by one of the following methods:

- *http://www.regulations.gov:* Follow the online instructions for submitting comments.
- *Email: ow-docket@epa.gov* (Identify Docket ID No. EPA–HQ–OW–2008–0719 in the subject line).
- *Mail:* Water Docket, Environmental Protection Agency, Mailcode: 28221T, ATTN: Docket ID #EPA–HQ–OW–2008–0719, 1200 Pennsylvania Ave. NW., Washington, DC 20460. Please include a total of three copies.
- *Hand Delivery:* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20004. ATTN: Docket ID # EPA–HQ–OW–2008–0719. 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 identified by the Docket ID No. EPA–HQ–OW–2008–0719. 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 *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. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

**FOR FURTHER INFORMATION CONTACT:** Sandra Rivera, State and Regional Branch, Water Permits Division, OWM Mail Code: 4203M, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–1054; email address: *rivera.sandra@epa.gov.*

**SUPPLEMENTARY INFORMATION:** An Agency may not conduct or sponsor, and a person is not required to respond to collection information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed in 40 CFR part 9.

### How can I access the docket and/or submit comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OW–2008–0719, which is available for online viewing at *www.regulations.gov,* or in person viewing at the Water Docket in the EPA Docket Center (EPA/DC), WJC West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Water Docket is 202–566–2426.

Use *www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

### What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) 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;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

Burden means 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. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

**What should I consider when I prepare my comments for EPA?**

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under DATES.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

*A. List of ICRs Planned To Be Submitted*

(1) Information Collection Request for Cooling Water Intake Structure Phase II Existing Facilities (Renewal), EPA ICR No. 2060.05, OMB Control No. 2040–0257; expiration date 01/31/2014.

(2) Information Collection Request for Cooling Water Intake Structures at Phase III Facilities (Renewal), EPA ICR No. 2169.03, OMB Control No. 2040–0268, expiration date 01/31/2014.

(3) Information Collection Request for Animal Sectors (Renewal); EPA ICR No. 1989.08; OMB Control No. 2040–0250, expiration date 01/31/2014.

*B. Information on Individual ICRs*

(1) Information Collection Request for Cooling Water Intake Structure Phase II Existing Facilities (Renewal), EPA ICR No. 2060.05, OMB Control No. 2040–0257; expiration date 01/31/2014.

*Affected entities:* Entities potentially affected by this action include existing electric power generating facilities meeting the applicability criteria of the 316(b) Phase II Existing Facility rule at 40 CFR 125.91.

*Abstract:* The section 316(b) Phase II Existing Facility rule requires the collection of information from existing point source facilities that generate and transmit electric power (as a primary activity) or generate electric power but sell it to another entity for transmission, use a cooling water intake structure (CWIS) that uses at least 25 percent of the water it withdraws from waters of the U.S. for cooling purposes, and have a design intake flow of 50 million gallons per day (MGD) or more. Section 316(b) of the Clean Water Act (CWA) requires that any standard established under section 301 or 306 of the CWA and applicable to a point source must require that the location, design, construction and capacity of CWISs at that facility reflect the best technology available (BTA) for minimizing adverse environmental impact. Such impact occurs as a result of impingement (where fish and other aquatic life are trapped on technologies at the entrance to CWIS) and entrainment (where aquatic organisms, eggs, and larvae are taken into the cooling system, passed through the heat exchanger, and then pumped back out with the discharge from the facility). The 316(b) Phase II rule establishes requirements applicable to the location, design, construction, and capacity of CWISs at Phase II existing facilities. These requirements establish the BTA for minimizing adverse environmental impact associated with the use of CWISs.

The 316(b) Phase II rule was signed on February 16, 2004. Industry and environmental groups, and a number of States filed legal challenges to the rule. Several issues were heard by the U.S. Court of Appeals for the Second Circuit, which issued a decision on January 25, 2007 remanding portions of the rule (see *Riverkeeper, Inc. v. U.S. EPA,* No. 04–6692–ag(L) [2d Cir. Jan. 25, 2007]). EPA subsequently suspended the Phase II rule on July 9, 2007 and directed permit writers to continue to issue permits with 316(b) requirements developed using the permit writer's best professional judgment (BPJ). Industry groups petitioned and were granted certiorari from the Supreme Court, which issued a decision on April 1, 2009 (*Entergy Corp. v. Riverkeeper, Inc.,* No. 07–588). EPA is currently in the process of developing a revised rule for existing facilities and expects to publish the final rule by November 4, 2013.

EPA believes that the burden estimated in this ICR is likely to represent an upper bound on the burden that the public would incur in complying with BPJ-based permitting requirements for cooling water intake structures at large existing power plants over the next three years. EPA will submit a revised ICR with the new rule that reflects its specific requirements. The revised ICR will replace this one when the new rule is promulgated.

*Burden Statement:* The annual average reporting and record keeping burden for the collection of information by facilities responding to the Section 316(b) Phase II Existing Facility rule is estimated to be 2,046 hours per respondent (i.e., an annual average of 965,509 hours of burden divided among an anticipated annual average of 472 facilities). The State Director reporting and record keeping burden for the review, oversight, and administration of the rule is estimated to average 1,060 hours per respondent (i.e., an annual average of 44,513 hours of burden divided among an anticipated 42 States on average per year).

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

*Estimated total number of potential respondents:* 548 (506 facilities and 42 States).

*Frequency of response:* Every five years, bi-annually, monthly.

*Estimated total average number of responses for each respondent:* 5.2 for facilities (2,473 annual average responses for 472 average facility respondents) and 58.8 for States (2,472 annual average responses for 42 average State respondents).

*Estimated total annual burden hours:* 1,010,021 (965,509 for facilities and 44,513 for States).

*Estimated total annual costs:* $59,478,399. This includes an estimated burden cost of $48,890,325 and an estimated cost of $10,588,074 for capital investment or maintenance and operational costs.

*Change in Burden:* There is a decrease of 13,500 (1%) hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This marginal change is due to the variations of the compliance schedule from year to year.

(2) Information Collection Request for Cooling Water Intake Structures at Phase III Facilities (Renewal), EPA ICR No. 2169.03, OMB Control No. 2040–0268, expiration date 01/31/2014.

*Affected entities:* Entities potentially affected by this action include new offshore oil and gas extraction facilities meeting the applicability criteria of the 316(b) Phase III Facilities at 40 CFR 125.131.

*Abstract:* The Section 316(b) regulations for Phase III facilities (71 FR 35006, June 16, 2006) require the collection of information from new offshore oil and gas extraction facilities that use a cooling water intake structure(s) that uses at least 25 percent of the water it withdraws for cooling purposes, and have a design intake flow greater than two (2) million gallons per day (MGD). Section 316(b) of the CWA requires that any standard established under section 301 or 306 of the CWA and applicable to a point source must require that the location, design, construction and capacity of cooling water intake structure(s) at that facility reflect the best technology available for

minimizing adverse environmental impact. Such impact occurs as a result of impingement (where fish and other aquatic life are trapped on structural components at the entrance to cooling water intake structures) and entrainment (where aquatic organisms, eggs, and larvae are taken into the cooling system, passed through the heat exchanger, and then pumped back out with the discharge from the facility). The rule contains requirements applicable to the location, design, construction, and capacity of cooling water intake structures at new offshore oil and gas extraction facilities. These requirements seek to establish the best technology available for minimizing adverse environmental impact associated with the use of cooling water intake structure(s).

*Burden Statement:* The annual average burden for new offshore oil and gas facilities is 56,755 hours for an average of 55 facilities. Hence, the annual average reporting and record keeping burden for the collection of information by facilities responding to the Section 316(b) Phase III rule is estimated to be 1,032 hours per respondent (i.e., an annual average of 56,755 hours of burden divided among an anticipated annual average of 55 facilities). For new offshore oil and gas extraction facilities, the permitting process is handled directly by EPA Regions 4, 6, and 10. Since this burden is incurred by the Federal Government rather than the States, it is not included as part of the burden statement for State Directors.

*Estimated total number of potential respondents:* 61 facilities.

*Frequency of response:* Every five years, annual, monthly.

*Estimated total average number of responses for each respondent:* 4.6 for facilities (251 annual average responses for 55 average facility respondents).

*Estimated total annual burden hours:* 56,755 hours.

*Estimated total annual costs:* $3,754,793. This includes an estimated labor burden cost of $2,795,603 and an estimated cost of $959,190 for capital investment or maintenance and operational costs.

*Change in Burden:* The current approved ICR for the Section 316(b) Phase III new offshore oil and gas facilities estimated an annual average respondent burden of 34,080 hours. This ICR estimates an annual average respondent burden of 56,755 hours, which represents a 67 percent increase (22,675 hours) in burden. The change in burden is mainly the result of the increase in the number of facilities performing recurring activities: this ICR includes burden for annual activities performed by respondents that have sought permit coverage in the last 6 years. As more facilities come on-line and receive permit coverage, more facilities have to perform these activities. This accounts for 22,146 additional average hours in this ICR (97.7% of the increase). Additional changes are the result of the continuous shift from the approval period to the permit implementation and renewal period of the Section 316(b) Phase III rule: in all three years covered by this ICR, facilities will be applying for a permit for the first time or re-applying for permit coverage that was obtained during the three years covered by the previous ICR. The increase of re-applications adds 529 hours to this ICR (2.3% of the increase).

(3) Information Collection Request for Animal Sectors (Renewal); EPA ICR No. 1989.08; OMB Control No. 2040–0250, expiration date 01/31/2014.

*Affected entities:* Entities potentially affected by this action are concentrated animal feeding operations (CAFOs) as specified in section 502(14) of the CWA, 33 U.S.C. 1362(14) and defined in the NPDES regulations at 40 CFR 122.23 and a subset of facilities engaged in aquatic animal production defined in 40 CFR part 451.

*Abstract:* This ICR covers the information collection burden imposed under the NPDES and ELG regulations for Concentrated Animal Feeding Operations (CAFO) and Concentrated Aquatic Animal Production (CAAP) facilities.

On July 30, 2012, EPA published its most recent revisions to the NPDES CAFO regulations (77 FR 44494). These revisions were necessary as a result of a court decision in 2011 by the United States Court of Appeals for the Fifth Circuit in litigation relating to the NPDES CAFO permitting program (*National Pork Producers Council v. EPA,* 635 F.3d 738, 756 (5th Cir. 2011)). Although the decision narrowed the scope of CAFOs that need to seek NPDES permit coverage, the Effluent Limitations Guidelines for CAFOs and other aspects of the permitting program remain unchanged. As a consequence, the recordkeeping and reporting requirements faced by those CAFOs that do seek NPDES permit coverage were not affected.

The Effluent Limitations Guidelines and Standards for the Concentrated Aquatic Animal Production (CAAP) Point Source Category establish specific reporting requirements for a portion of CAAP facilities through NPDES permits. The rule covers facilities which are defined as CAAP facilities (see 40 CFR 122.24 and 40 CFR Part 122) and produce at least 100,000 pounds of fish per year in flow through, recirculating and net pen systems. The special reporting and record-keeping requirements under the rule are the subject of this ICR. CAAP facility owners or operators are required to file reports with the permitting authority when drugs with special approvals are applied to the production units or a failure in the structural integrity occurs in the aquatic animal containment system.

*Burden Statement:* The annual average reporting and record keeping burden for the collection of information by CAFO and CAAP facilities is estimated to be 125 hours per respondent (i.e., an annual average of 2,606,066 hours of burden divided among an anticipated annual average of 20,915 facilities). The State Director reporting and record keeping burden for the review, oversight, and administration of the rule is estimated to average 11,538 hours per respondent (i.e., an annual average of 530,734 hours of burden divided among an anticipated 46 States on average per year).

*Estimated total number of potential respondents:* 21,667 (21,621 facilities and 46 States).

*Frequency of response:* varies from once to ongoing.

*Estimated total average number of responses for each respondent:* 149.5 for facilities (3,126,771 annual average responses for 20,915 average facility respondents) and 894.8 for States (41,159 annual average responses for 46 average State respondents).

*Estimated total annual burden hours:* 3,136,799 (2,606,066 for facilities and 530,734 for States).

*Estimated total annual costs:* $70,924,281. This includes an estimated burden cost of $62,317,281 and an estimated cost of $8,607,000 for capital investment or maintenance and operational costs.

*Change in Burden:* The current burden approved by OMB for this ICR is 3,273,678 hours. This updated ICR estimates a total burden that is 136,879 hours less (4.2%) than the currently approved amount. On July 30, 2012, EPA published its most recent revisions to the NPDES CAFO regulations (77 FR 44494). These revisions were necessary as a result of a 2011 decision by the United States Court of Appeals for the Fifth Circuit regarding the NPDES CAFO permitting program (*National Pork Producers Council v. EPA,* 635 F.3d 738, 756 (5th Cir. 2011)). Although the court decision did not alter the Effluent Limitations Guidelines for NPDES-permitted CAFOs or

recordkeeping and reporting requirements faced by those CAFOs that do seek NPDES permit coverage, it significantly narrowed the scope of CAFOs that need to seek NPDES permit coverage. More specifically, the court vacated the requirement that CAFOs that ''discharge or proposed to discharge'' seek NPDES permit coverage, and ruled instead that only those CAFOs that experience actual discharges need permits. The resulting projected decline in NPDES CAFO permittees is estimated to cause a reduction of 636,192 hours for private respondents and 638 for State respondents.

**What is the next step in the process for these ICRs?**

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: September 9, 2013.

**Andrew D. Sawyers,**

*Director, Office of Wastewater Management.*

[FR Doc. 2013–22627 Filed 9–16–13; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OAR–2006–0947; FRL—9901–08–OAR]**

## Proposed Information Collection Request; Comment Request; $NO_X$ Budget Trading Program To Reduce the Regional Transport of Ozone (Renewal)

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

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency is planning to submit an information collection request (ICR), ''Information Collection Request Renewal for the $NO_X$ Budget Trading Program to Reduce the Regional Transport of Ozone'' (EPA ICR No. 1857.06, OMB Control No. 2060–0445) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through February 28, 2014. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

**DATES:** Comments must be submitted on or before November 18, 2013.

**ADDRESSES:** Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2006–0947. online using *www.regulations.gov* (our preferred method), by email to *a-and-r-docket@epamail.epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

**FOR FURTHER INFORMATION CONTACT:** Karen VanSickle, Clean Air Markets Division, Office of Air and Radiation, (6204J), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 343–9220; fax number: (202) 343–2361; email address: *vansickle.karen@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) 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; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) 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. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

*Abstract:* The $NO_X$ Budget Trading Program is a market-based cap and trade program created to reduce emissions of nitrogen oxides ($NO_X$) from power plants and other large combustion sources in the eastern United States. $NO_X$ is a prime ingredient in the formation of ground-level ozone (smog), a pervasive air pollution problem in many areas of the eastern United States. The $NO_X$ Budget Trading Program was designed to reduce $NO_X$ emissions during the warm summer months, referred to as the ozone season, when ground-level ozone concentrations are highest. In 2009 the program was replaced by the Clean Air Interstate Rule Ozone Season Trading Program (CAIROS). Although the trading program was replaced after the 2008 compliance season, this information collection is being renewed for two reasons. First, some industrial sources in certain States are still required to monitor and report emissions data to EPA under these rules, so we will account for their burden. Second, the Agency may at some future time, reinstitute the $NO_X$ Budget Trading Program. For example, this might happen if both the CAIR and CAIR replacement rules were vacated by the Court. All data received by EPA will be treated as public information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

*Form Numbers:* None.

*Respondents/affected entities:* Entities potentially affected by this action are those which participate in the $NO_X$ Budget Trading Program to Reduce the Regional Transport of Ozone.

*Respondent's obligation to respond:* mandatory (Sections 110(a) and 301(a) of the Clean Air Act).

*Estimated number of respondents:* EPA estimates that there are 122 former $NO_X$ Budget Trading Program units that will continue to conduct monitoring in accordance with Part 75 solely under the $NO_X$ SIP call.

*Frequency of response:* yearly, quarterly, occasionally.

*Total estimated burden:* 57,586 hours (per year). Burden is defined at 5 CFR 1320.3(b).

*Total estimated cost:* $7,466.951 (per year), includes $3,777,000 annualized capital or operation & maintenance costs.

*Changes in Estimates:* There is no increase in hours in the total estimated respondent burden compared with the ICR currently approved by OMB.

Dated: August 29, 2013.

**Reid Harvey,**

*Director, Clean Air Markets Division.*

[FR Doc. 2013–22602 Filed 9–16–13; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 15, 2013.

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. *Fairmount Bancorp, Inc.,* Rosedale, Maryland, to become a bank holding company upon the conversion of Fairmount Bank, Rosedale, Maryland, to a state chartered commercial bank.

B. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *ZT Acquisitions, Inc., and ZT Financial Holdings, Inc.,* both of Houston, Texas, to become bank holding companies through the acquisition of First National Bank of Colorado City, Colorado City, Texas.

Board of Governors of the Federal Reserve System, September 12, 2013.

**Margaret McCloskey Shanks,**

*Deputy Secretary of the Board.*

[FR Doc. 2013–22595 Filed 9–16–13; 8:45 am]

**BILLING CODE 6210–01–P**

## FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

### Sunshine Act Meeting

**TIME AND DATE:** 9:00 a.m. (Eastern Time) September 23, 2013.

**PLACE:** 10th Floor Board Meeting Room, 77 K Street NE., Washington, DC 20002.

**STATUS:** Parts will be open to the public.

**MATTERS TO BE CONSIDERED:**

### Parts Open to the Public

1. Approval of the Minutes of the August 9, 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
3. Quarterly Metrics
4. ERM Report
5. Budget Review and Approval
6. 2014 Board Meeting Calendar

**CONTACT PERSON FOR MORE INFORMATION:** Kimberly Weaver, Director, Office of External Affairs, (202) 942–1640.

Dated: September 13, 2013.

**James B. Petrick,**

*Secretary, Federal Retirement Thrift Investment Board.*

[FR Doc. 2013–22667 Filed 9–13–13; 11:15 am]

**BILLING CODE 6760–01–P**

## FEDERAL TRADE COMMISSION

### Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination—on the dates indicated—of the waiting period provided by law and the premerger notification rules. The listing for each transaction includes the transaction number and the parties to the transaction. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

EARLY TERMINATIONS GRANTED AUGUST 1, 2013 THRU AUGUST 30, 2013

| | | | |
|---|---|---|---|
| 08/02/2013 | 20131091 | G | Crestview Partners II, L.P.; DSW Holding Company, LLC; Crestview Partners II, L.P. |
| | 20131095 | G | Riverstone Global Energy and Power Fund; Apache Corporation; Riverstone Global Energy and Power Fund. |
| | 20131096 | G | TPG VI DE AIV II, L.P.; Envision RX Options Holdings Inc.; TPG VI DE AIV II, L.P. |
| | 20131102 | G | ASAC II LP; Activision Blizzard, Inc.; ASAC II LP. |
| | 20131119 | G | Abbott Laboratories; OptiMedica Corporation; Abbott Laboratories. |

EARLY TERMINATIONS GRANTED AUGUST 1, 2013 THRU AUGUST 30, 2013—Continued

| | | | |
|---|---|---|---|
| 08/05/2013 | 20131109 | G | EATELCORP, L.L.C.; Gladstone Investment Corporation; EATELCORP, L.L.C. |
| 08/07/2013 | 20131101 | G | JPMorgan Chase & Co.; Pate Holding Company, L.L.P.; JPMorgan Chase & Co. |
| 08/09/2013 | 20131082 | G | Amgen Inc.; Servier SAS; Amgen Inc. |
| | 20131103 | G | Genesis Energy, L.P.; Hornbeck Offshore Services, Inc.; Genesis Energy, L.P. |
| | 20131104 | G | Enstar Group Limited; Torus Insurance Holdings Limited; Enstar Group Limited |
| | 20131105 | G | First Reserve Fund XI Offshore AIV, L.P.; Enstar Group Limited; First Reserve Fund XI Offshore AIV, L.P. |
| | 20131106 | G | First Reserve Fund XII LP; Enstar Group Limited; First Reserve Fund XII LP. |
| | 20131107 | G | General Atlantic Partners (Bermuda) III, L.P.; Banco Santander, S.A.; General Atlantic Partners (Bermuda) III, L.P. |
| | 20131108 | G | Warburg Pincus (IO) XI (Cayman), L.P.; Banco Santander, S.A.; Warburg Pincus (IO) XI (Cayman), L.P. |
| | 20131111 | G | American Industrial Partners Capital Fund V, L.P.; Nordstjernan AB; American Industrial Partners Capital Fund V, L.P. |
| | 20131113 | G | MicroPort Scientific Corporation; Wright Medical Group, Inc.; MicroPort Scientific Corporation. |
| | 20131124 | G | Hubbard Broadcasting, Inc.; Alice S. White Living Trust; Hubbard Broadcasting, Inc. |
| | 20131125 | G | Boise Cascade Company; Wood Resources LLC; Boise Cascade Company. |
| | 20131129 | G | Genossenschaft Constanter; DW Healthcare Partners, L.P.; Genossenschaft Constanter. |
| | 20131131 | G | Gentex Corporation; Johnson Controls, Inc.; Gentex Corporation. |
| 08/12/2013 | 20130993 | G | L'Air Liquide S.A.; John P. deNeufville; L'Air Liquide S.A. |
| | 20131141 | G | HAS Development Corporation; Abertis Infraestructuras, S.A.; HAS Development Corporation. |
| 08/13/2013 | 20131115 | G | Lynden Incorporated; Endeavour Capital Fund IV, L.P.; Lynden Incorporated. |
| | 20131145 | G | B/E AEROSPACE, INC.; Blue Dot Energy Services, LLC; B/E AEROSPACE, INC. |
| 08/14/2013 | 20131012 | G | Johnson & Johnson; Aragon Pharmaceuticals, Inc.; Johnson & Johnson. |
| | 20131097 | G | Trian Partners Strategic Investment Fund, L.P.; Mondelez International, Inc.; Trian Partners Strategic Investment Fund, L.P. |
| | 20131117 | G | Abbott Laboratories; IDEV Technologies, Inc.; Abbott Laboratories. |
| 08/16/2013 | 20131027 | G | Precision Castparts Corp.; Bridgepoint Europe III 6 FCPR; Precision Castparts Corp. |
| | 20131099 | G | Carl C. Icahn; Apple Inc.; Carl C. Icahn. |
| | 20131118 | G | Welsh, Carson, Anderson & Stowe XI, L.P.; Alert Logic, Inc.; Welsh, Carson, Anderson & Stowe XI, L.P. |
| | 20131120 | G | Providence Equity Partners VI L.P.; Informa plc; Providence Equity Partners VI L.P. |
| | 20131146 | G | Susanne Klatten; Rockwood Holdings, Inc.; Susanne Klatten. |
| | 20131150 | G | Adage Capital Partners, L.P.; Puma Biotechnology, Inc.; Adage Capital Partners, L.P. |
| | 20131153 | G | Catamaran LLC; The F. Dohmen Co.; Catamaran LLC. |
| | 20131154 | G | Blucora, Inc.; Jong Suk Lee; Blucora, Inc. |
| | 20131155 | G | KKR North American Fund XI, L.P.; Warburg Pincus Private Equity X, L.P.; KKR North American Fund XI, L.P. |
| | 20131157 | G | Hellman & Friedman Capital Partners VII, L.P.; Maple Tree Holdings, L.P.; Hellman & Friedman Capital Partners VII, L.P. |
| | 20131162 | G | TA XI L.P.; John Rante; TA XI L.P. |
| | 20131163 | G | Cummins Inc.; R. Kevin Shanahan; Cummins Inc. |
| | 20131164 | G | Mark Yragui; R. Kevin Shanahan; Mark Yragui. |
| 08/19/2013 | 20131081 | G | Deutsche Telekom AG; Telephone and Data Systems, Inc. Voting; Deutsche Telekom AG. |
| | 20131158 | G | Apollo Investment Fund VII, L.P.; Pitney Bowes Inc.; Apollo Investment Fund VII, L.P. |
| | 20131159 | G | Target Corporation; IB Holding, LLC; Target Corporation. |
| 08/20/2013 | 20131137 | G | Dominic Origlio, Jr.; Terrance J. McGlinn, Sr.; Dominic Origlio, Jr. |
| | 20131138 | G | Jeffrey A. Honickman; Terrence J. McGlinn, Sr.; Jeffrey A. Honickman |
| 08/21/2013 | 20130835 | G | Koch Industries, Inc.; Buckeye Technologies Inc.; Koch Industries, Inc. |
| 08/22/2013 | 20131132 | G | PS V International, Ltd.; Air Products and Chemicals, Inc.; PS V International, Ltd. |
| | 20131133 | G | Pershing Square Holdings, Ltd.; Air Products and Chemicals, Inc.; Pershing Square Holdings, Ltd. |

EARLY TERMINATIONS GRANTED AUGUST 1, 2013 THRU AUGUST 30, 2013—Continued

| | | | |
|---|---|---|---|
| | 20131134 | G | Pershing Square, L.P.; Air Products and Chemicals, Inc.; Pershing Square, L.P. |
| | 20131135 | G | Pershing Square International, Ltd.; Air Products and Chemicals, Inc.; Pershing Square International, Ltd. |
| 08/23/2013 | 20131169 | G | Platinum Equity Capital Partners III, L.P.; Emerson Electric Co.; Platinum Equity Capital Partners III, L.P. |
| | 20131172 | G | Post Holdings, Inc.; Premier Nutrition Corporation; Post Holdings, Inc. |
| | 20131175 | G | QUIKRETE Holdings, Inc.; Kelso Investment Associates VII, L.P.; QUIKRETE Holdings, Inc. |
| | 20131184 | G | SolarCity Corporation; BKM Holdings, LLC; SolarCity Corporation. |
| | 20131185 | G | TA XI L.P.; SoftWriters Group, LLC; TA XI L.P. |
| | 20131186 | G | Humana Inc.; Robert G. Schemel; Humana Inc. |
| | 20131191 | G | Blackstone Capital Partners V, L.P.; Unilever N.V.; Blackstone Capital Partners V, L.P. |
| 08/26/2013 | 20131171 | G | Silver Lake Sumeru Fund, L.P.; BlackLine Systems, Inc.; Silver Lake Sumeru Fund, L.P. |
| 08/28/2013 | 20131123 | G | Hanesbrands Inc.; Maidenform Brands, Inc.; Hanesbrands Inc. |
| | 20131156 | G | Hudson's Bay Trading Company, L.P.; Saks Incorporated; Hudson's Bay Trading Company, L.P. |
| | 20131161 | G | Carl C. Icahn; Nuance Communications, Inc.; Carl C. Icahn. |
| 08/29/2013 | 20131166 | G | Marcato, L.P.; Sotheby's; Marcato, L.P. |
| | 20131167 | G | Marcato International Ltd.; Sotheby's; Marcato International Ltd. |
| | 20131176 | G | AOL Inc.; Adap.tv, Inc.; AOL Inc. |
| 08/30/2013 | 20131189 | G | Vahid David Delrahim; Sally Anenberg; Valid David Delrahim. |
| | 20131199 | G | Platinum Equity Capital Partners III, L.P.; JPMorgan Chase & Co.; Platinum Equity Capital Partners III, L.P. |
| | 20131208 | G | AOT Building Products LP; CPG International Holdings LP. AOT Building Products LP. |
| | 20131210 | G | Eurasian Resources Group; Eurasian Natural Resources Corporation PLC; Eurasian Resources Group. |
| | 20131218 | G | Mr. John W. Henry; The New York Times Company; Mr. John W. Henry. |

**FOR FURTHER INFORMATION CONTACT:** Renee Chapman, Contact Representative, or Theresa Kingsberry, Legal Assistant, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H–303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 2013–22333 Filed 9–16–13; 8:45 am]

**BILLING CODE 6750–01–M**

## GENERAL SERVICES ADMINISTRATION

**[OMB Control No. 3090–0302; Docket No. 2013–0001; Sequence 9]**

### General Services Administration Acquisition Regulation; Submission for OMB Review; Modifications (Federal Supply Schedules)

**AGENCY:** Office of Acquisition Policy, General Services Administration (GSA).

**ACTION:** Notice of request for public comments on an information collection requirement for an OMB clearance.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an information collection requirement regarding the Modifications (Federal Supply Schedule) clause.

**DATES:** Submit comments on or before: October 17, 2013.

**FOR FURTHER INFORMATION CONTACT:** Ms. Dana Munson, General Services Acquisition Policy Division, GSA, 202–357–9652 or email *Dana.Munson@gsa.gov* for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite information collection 3090–0302.

**ADDRESSES:** Submit comments identified by Information Collection 3090–0302, Modifications, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching for ''Information Collection 3090–0302, Modifications.'' Select the link ''Submit a Comment'' that corresponds with ''Information Collection 3090–0302, Modifications.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 3090–0302, Modifications,'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Hada Flowers/IC 3090–0302, Information Collection 3090–0302, Modifications.

*Instructions:*

- Submit comments including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, Regulatory Secretariat Division (MVCB), 2250C, 1800 F Street NW., Washington, DC 20405.
- Please submit comments only and cite Information Collection 3090–0302, Modifications, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

**SUPPLEMENTARY INFORMATION:**

### A. Purpose

GSA is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to add clause 552.243–81 Modifications (Federal Supply Schedule) and an Alternate I version of the clause that

requires electronic submission of modifications for FSS contracts managed by GSA. Under the modifications clause, vendors may request a contract modification by submitting a request to the Contracting Officer for approval. At a minimum, every request shall describe the proposed change(s) and provide the rationale for the requested change(s).

The initial clause, previously at GSAR 552.243–72 Modifications (Multiple Award Schedule), is being reinstated at GSAR 552.238–81, Modifications (Federal Supply Schedule).

The alternate version of the clause implements and mandates electronic submission of modifications, and only applies to FSS contracts managed by GSA. The alternate version of the clause links to GSA's electronic tool, eMod at *http://eoffer.gsa.gov/*. Use of eMod will streamline the modification submission process for both FSS contractors and contracting officers.

The Department of Veterans Affairs (VA) does not have access to eMod, and is therefore not required to comply with the requirements of the Alternate I version of GSAR clause 552.238–81, Modifications (Federal Supply Schedule). VA will continue to utilize the basic version of the clause in management of their FSS contracts.

**B. Discussion and Analysis**

A notice for this collection was published in the **Federal Register** at 78 FR 31879, on May 28, 2013. One comment was received that was outside the scope of the notice.

As a result, no change to the burden estimate for this collection was made.

*Public Comments*

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the GSAR, and will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of appropriate technological collection techniques or other forms of information technology.

**C. Annual Reporting Burden**

The annual reporting burden is estimated as follows:

*552.238–81 Modifications (Federal Supply Schedule)*

*Respondents:* 1,500.
*Responses per Respondent:* 3.
*Total Responses:* 4,500.
*Hours per Response:* 5.
*Total Burden Hours:* 22,500.

*552.238–81 Modifications Alternate I (Federal Supply Schedule)*

*Estimated Respondents/yr:* 19,000.
*Number of Submissions per Respondent:* 3.
*Total Responses:* 57,000.
*Estimated Hours/Response:* 4.
*Total Burden Hours:* 228,000.

*Obtaining Copies of Proposals*

Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street NW., Washington, DC 20405; telephone 202–501–4755. Please cite OMB Control No. 3090–0302, ''Modifications'' in all correspondence.

Dated: September 11, 2013.

**Laura Auletta,**

*Acting Senior Procurement Executive, Office of Acquisition Policy.*

[FR Doc. 2013–22526 Filed 9–16–13; 8:45 am]

BILLING CODE 6820–61–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Healthcare Research and Quality

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Agency for Healthcare Research and Quality, HHS.

**ACTION:** Notice.

**SUMMARY:** This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: ''Medical Expenditure Panel Survey—Insurance Component.'' In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3521, AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on June 28th, 2013 and allowed 60 days for public comment. No comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

**DATES:** Comments on this notice must be received by October 17, 2013.

**ADDRESSES:** Written comments should be submitted to: AHRQ's OMB Desk Officer by fax at (202) 395–6974 (attention: AHRQ's desk officer) or by email at *OIRA_submission@omb.eop.gov* (attention: AHRQ's desk officer).

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

**FOR FURTHER INFORMATION CONTACT:** Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRQ.hhs.gov*.

**SUPPLEMENTARY INFORMATION:**

**Proposed Project**

*Medical Expenditure Panel Survey—Insurance Component*

Employer-sponsored health insurance is the source of coverage for 78 million current and former workers, plus many of their family members, and is a cornerstone of the U.S. health care system. The Medical Expenditure Panel Survey—Insurance Component (MEPS–IC) measures the extent, cost, and coverage of employer-sponsored health insurance on an annual basis. These statistics are produced at the National, State, and sub-State (metropolitan area) level for private industry. Statistics are also produced for State and Local governments.

This research has the following goals:

(1) To provide data for Federal policymakers evaluating the effects of National and State health care reforms.

(2) To provide descriptive data on the current employer-sponsored health insurance system and data for modeling the differential impacts of proposed health policy initiatives.

(3) To supply critical State and National estimates of health insurance spending for the National Health Accounts and Gross Domestic Product.

(4) To support evaluation of the impact on health insurance offered by small employers due to the implementation of Small Business Health Options Program (SHOP) exchanges under the Patient Protection and Affordable Care Act (PPACA), through the addition of a longitudinal component to the sample.

This study is being conducted by AHRQ through the Bureau of the Census, pursuant to AHRQ's statutory authority to conduct and support research on healthcare and on systems for the delivery of such care, including activities with respect to the quality, effectiveness, efficiency, appropriateness and value of healthcare services and with respect to quality measurement and improvement. 42 U.S.C. 299a(a)(1) and (2).

**Method of Collection**

To achieve the goals of this project the following data collections for both private sector and State and local government employers will be implemented:

(1) Prescreener Questionnaire—The purpose of the Prescreener Questionnaire, which is collected via telephone, varies depending on the insurance status of the establishment contacted. (Establishment is defined as a single, physical location in the private sector and a governmental unit in state and local governments.) For establishments that do not offer health insurance to their employees, the prescreener is used to collect basic information such as number of employees. Collection is completed for these establishments through this telephone call. For establishments that do offer health insurance, contact name and address information is collected that is used for the mailout of the establishment and plan questionnaires. Obtaining this contact information helps ensure that the questionnaires are directed to the person in the establishment best equipped to complete them.

(2) Establishment Questionnaire—The purpose of the mailed Establishment Questionnaire is to obtain general information from employers that provide health insurance to their employees. Information such as total active enrollment in health insurance, other employee benefits, demographic characteristics of employees, and retiree health insurance is collected through the establishment questionnaire.

(3) Plan Questionnaire—The purpose of the mailed Plan Questionnaire is to collect plan-specific information on each plan (up to four plans) offered by establishments that provide health insurance to their employees. This questionnaire obtains information on total premiums, employer and employee contributions to the premium, and plan enrollment for each type of coverage offered—single, employee-plus-one, and family—within a plan. It also asks for information on deductibles, copays, and other plan characteristics.

(4) Longitudinal Sample—For 2014, an additional sample of small employers (those with 50 or fewer employees) will be included in the collection. This sample, called the Longitudinal Sample (LS), is designed to measure the impact on small employers of the SHOP exchanges that will become available that year. The LS will consist of 3,000 small, private-sector employers that responded to the 2013 MEPS–IC regular survey. These employers will be surveyed again in 2014—using the same collection methods as the regular survey—in order to track changes in their health insurance offerings, characteristics, and costs.

The primary objective of the MEPS–IC is to collect information on employer-sponsored health insurance. Such information is needed in order to provide the tools for Federal, State, and academic researchers to evaluate current and proposed health policies and to support the production of important statistical measures for other Federal agencies.

**Estimated Annual Respondent Burden**

Exhibit 1 shows the estimated annualized burden hours for the respondent's time to provide the requested data. The Prescreener questionnaire will be completed by 32,675 respondents and takes about 5½ minutes to complete. The Establishment questionnaire will be completed by 28,365 respondents and takes about 23 minutes to complete. The Plan questionnaire will be completed by 23,813 respondents and will require an average of 2.2 responses per respondent. Each Plan questionnaire takes about 11 minutes to complete. The total annualized burden hours are estimated to be 23,150 hours.

Exhibit 2 shows the estimated annualized cost burden associated with the respondents' time to participate in this data collection. The annualized cost burden is estimated to be $679,221.

The estimates of annualized burden hours and costs have increased slightly relative to the 60-Day Notice due to the inclusion of the Longitudinal Sample in the estimates.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

| Form name | Number of respondents | Number of responses per respondent | Hours per response | Total burden hours |
|---|---|---|---|---|
| Prescreener Questionnaire | 32,675 | 1 | 0.09 | 2,941 |
| Establishment Questionnaire | 28,365 | 1 | *0.38 | 10,779 |
| Plan Questionnaire | 23,813 | 2.2 | 0.18 | 9,430 |
| Total | 84,853 | na | na | 23,150 |

* The burden estimate printed on the establishment questionnaire is 45 minutes which includes the burden estimate for completing the establishment questionnaire, an average of 2.2 plan questionnaires, plus the prescreener. The establishment and plan questionnaires are sent to the respondent as a package and are completed by the respondent at the same time.

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

| Form name | Number of respondents | Total burden hours | Average hourly wage rate * | Total cost burden |
|---|---|---|---|---|
| Prescreener Questionnaire | 32,675 | 2,941 | 29.34 | $86,289 |
| Establishment Questionnaire | 28,365 | 10,779 | 29.34 | 316,256 |
| Plan Questionnaire | 23,813 | 9,430 | 29.34 | 276,676 |
| Total | 84,853 | 23,150 | na | 679,221 |

* Based upon the mean hourly wage for Compensation, Benefits, and Job Analysis Specialists occupation code 13–1141, at *http://bls.gov/oes/current/oes131141.htm* (U.S. Department of Labor, Bureau of Labor Statistics.)

**Request for Comments**

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: September 10, 2013.

**Richard Kronick,**

*Director.*

[FR Doc. 2013–22578 Filed 9–16–13; 8:45 am]

**BILLING CODE 4160–90–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Healthcare Research and Quality

### Scientific Information Request on Medication Therapy Management

**AGENCY:** Agency for Healthcare Research and Quality (AHRQ), HHS.

**ACTION:** Request for scientific information submissions.

**SUMMARY:** The Agency for Healthcare Research and Quality (AHRQ) is seeking scientific information submissions from the public on medication therapy management Scientific information is being solicited to inform our review of *Medication Therapy Management,* which is currently being conducted by the Evidence-based Practice Centers for the AHRQ Effective Health Care Program. Access to published and unpublished pertinent scientific information on medication therapy management will improve the quality of this review. AHRQ is conducting this comparative effectiveness review pursuant to Section 1013 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Public Law 108–173, and Section 902(a) of the Public Health Service Act, 42 U.S.C. 299a(a).

**DATES:** *Submission Deadline* on or before October 17, 2013.

**ADDRESSES:** *Online submissions: http://effectivehealthcareAHRQ.gov/index.cfm/submit-scientific-information-packets/.* Please select the study for which you are submitting information from the list to upload your documents.

*Email submissions: SIPS@epc-src.org.*

*Print submissions:*

Mailing Address: Portland VA Research Foundation, Scientific Resource Center, ATTN: Scientific Information Packet Coordinator, P.O. Box 69539, Portland, OR 97239.

Shipping Address (FedEx, UPS, etc.): Portland VA Research Foundation, Scientific Resource Center, ATTN: Scientific Information Packet Coordinator, 3710 SW., U.S. Veterans Hospital Road, Mail Code: R&D 71, Portland, OR 97239.

**FOR FURTHER INFORMATION CONTACT:** Robin Paynter, Research Librarian, Telephone: 503–220–8262 ext. 58652 or Email: *SIPS@epc-src.org.*

**SUPPLEMENTARY INFORMATION:** The Agency for Healthcare Research and Quality has commissioned the Effective Health Care (EHC) Program Evidence-based Practice Centers to complete a review of the evidence for Medication Therapy Management.

The EHC Program is dedicated to identifying as many studies as possible that are relevant to the questions for each of its reviews. In order to do so, we are supplementing the usual manual and electronic database searches of the literature by requesting information from the public (e.g., details of studies conducted). We are looking for studies that report on medication therapy management, including those that describe adverse events. The entire research protocol, including the key questions, is also available online at: *http://www.effectivehealthcare.AHRQ.gov/search-for-guides-reviews-and-reports/?pageaction=displayproduct&productid=1601.*

This notice is to notify the public that the EHC program would find the following information on *medication therapy management* helpful:

- A list of completed studies your company has sponsored. In the list, *indicate whether results are available on ClinicalTrials.gov along with the ClinicalTrials.gov trial number.*
- *For completed studies that do not have results on ClinicalTrials.gov,* a summary, including the following elements: study number, study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, primary and secondary outcomes, baseline characteristics, number of patients screened/eligible/enrolled/lost to follow-up/withdrawn/analyzed, effectiveness/efficacy, and safety results.
- *A list of ongoing studies your company has sponsored.* In the list, please provide the ClinicalTrials.gov trial number or, if the trial is not registered, the protocol for the study including a study number, the study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, and primary and secondary outcomes.
- Description of whether the above studies constitute *ALL Phase II and above clinical trials* sponsored by your company for this indication and an index outlining the relevant information in each submitted file.

Your contribution is very beneficial to the Program. The contents of all submissions will be made available to the public upon request. Materials submitted must be publicly available or can be made public. Materials that are considered confidential; marketing materials; study types not included in the review, such as cross-sectional studies, case series, case reports, before-and-after designs without a control group, and program evaluation data that does not include a comparison group; or information on indications not included in the review cannot be used by the Effective Health Care Program. This is a voluntary request for information, and all costs for complying with this request must be borne by the submitter.

The draft of this review will be posted on AHRQ's EHC program Web site and available for public comment for a period of 4 weeks. If you would like to be notified when the draft is posted, please sign up for the email list at: *http://effectivehealthcare.AHRQ.gov/index.cfm/join-the-email-list1/.*

*The systematic review will answer the following questions. This information is provided as background. AHRQ is not requesting that the public provide answers to these questions.* The entire research protocol, is also available online at: *http://www.effectivehealthcare.AHRQ.gov/search-for-guides-reviews-and-reports/?pageaction=displayproduct&productid=1601.*

**Question 1**

What are the components and implementation features of MTM interventions?

**Question 2**

In adults with one or more chronic diseases who are taking prescription

medication, is MTM effective in improving the following:

a. Intermediate outcomes, including biometric and laboratory measures, drug therapy problems identified, drug therapy problems resolved, medication adherence, goals of therapy met, and patient engagement in medication management?

b. Patient-centered outcomes, such as disease-specific morbidity, disease-specific or all cause mortality, adverse drug events, health-related quality of life, activities of daily living, patient satisfaction with health care, work or school absenteeism, and patient and caregiver participation in medical care and decisionmaking?

c. Resource utilization, such as prescription drug costs, other health care costs, and health care utilization?

**Question 3**

Does the effectiveness of MTM differ by MTM components and implementation features?

**Question 4**

Does the effectiveness of MTM differ by patient characteristics, including but not limited to patient demographics and numbers and types of conditions and medications?

**Question 5**

Are there harms of MTM, and if so, what are they?

*The PICOTS (Population(s), Interventions, Comparators, Outcomes, Timing, and Settings) criteria for the comparative effectiveness review are as follows:*

*Population(s)*

- Patients ages 18 or older with one or more chronic conditions requiring the use of prescription medication to manage symptoms or prevent progression of chronic disease
- Patient characteristics that may influence intervention effectiveness:
  - Age, sex, race and ethnicity, socioeconomic status, health insurance status, education level, health literacy status, cognitive impairment, number and types of chronic conditions, social support, and urban/rural status

*Interventions*

- Explicitly termed *MTM* services, generally provided as a bundle of related services, that include at a *minimum* four of the following elements:
  - Comprehensive medication review
  - Patient-directed medication management action plan, with or without an equivalent prescriber-directed action plan
  - Patient-directed education and counseling or other resources to enhance understanding of the use of medication
  - Coordination of care, including prescriber-directed interventions; documentation of MTM services for use by the patient's other providers; and referral to other providers, clinicians, or resources when appropriate
- MTM-like services that are provided as a bundle or multicomponent intervention, even if not explicitly termed ''medication therapy management''

The following types of interventions generally are not considered MTM interventions and will not be included:

- Medication reconciliation interventions
- Integrated pharmacy services within inpatient settings
- One-time corrective actions related to medication management
- Disease management interventions
- Case or care management interventions
- The following types of interventions may include MTM services, but MTM may represent only one component of the overall intervention:
  - Patient-centered home health care-delivery model
  - Fully integrated, collaborative care models involving multiple disciplines and specialties

Studies should contain the same level of overall medical care/health care services among different study arms such that the effect of MTM interventions can be isolated. For example, a study with two arms that has one arm with a care management intervention that includes MTM services and the other arm that has the care management intervention without MTM services could be included. A study that includes a care management intervention with MTM in one arm and usual medical care (no care management intervention) in the other arm would not be included.

- Implementation features that may influence intervention effectiveness include the following:
  - Mode of delivery: telephonic, face to face, virtual (Web/online/Internet), and remote video
  - Type of professional providing initial and followup MTM service: pharmacist, nurse, physician, other clinician
  - Frequency and interval of followup for MTM services
  - Specific MTM components used
  - Fidelity in implementing MTM components: to what extent were services delivered as designed or intended
  - Establishing and communicating goals of drug therapy to patients and among care providers
  - Method of identifying patients for enrollment (e.g., population health data, provider referral for services, enrollment during a transition in care, targeting highly activated patients, targeting patients at time of high risk for event [e.g., when prescribing a new drug])
  - Level of integration of MTM with usual care, which includes access to real-time clinical information and laboratory values, and regular and consistent communication among prescribers and persons providing MTM services
  - Reimbursement characteristics (e.g., who is paying for cost of MTM services, who is reimbursed for MTM services, whether services are separately reimbursable)
  - Health system characteristics (e.g., are services being provided within an accountable care organization, patient-centered medical home, or some other unique system setting [e.g., the VHA, the Indian Health Service, non-U.S. single-payer system])

*Comparators*

- Usual care, as defined by the studies
- Individual components of MTM services (e.g., MTM services with four components vs. a single component)
- Different bundles of MTM services
- Same MTM services provided by different health care professionals (e.g., pharmacist, physician, nurse, other)
- Same bundles of MTM services delivered by different modes (e.g., telephone or in person)
- Same MTM services provided at different intensities, frequencies, or level of integration with prescribers

*Outcomes*

- Intermediate Outcomes
  - Disease-specific laboratory or biometric outcomes (e.g., hemoglobin A1c; blood pressure; total, low-density lipoprotein, or high-density lipoprotein cholesterol; pulmonary function; renal function; left ventricular ejection fraction; or other lab or biometric outcome specific to diseases covered)
  - Drug therapy problems identified as defined by primary studies but typically including the following:

medications being taken but not indicated; medications indicated but not prescribed; patient adherence issues; supratherapeutic doses; subtherapeutic doses; generic, formulary, or therapeutic substitution issues; complex regimen that can be simplified with same therapeutic benefit; and potential for drug-drug interactions or adverse events.

- ○ Drug therapy problems that resolved as defined by primary studies but typically including the following: needed drug initiated; unnecessary drug discontinued; change in drug dose, form, or frequency; or generic, formulary, or therapeutic substitution
- ○ Medication adherence
- ○ Goals of therapy met
- ○ Patient engagement (e.g., initial and continuing patient participation in the MTM program)

- Patient-Centered Outcomes

- ○ Disease-specific morbidity, including falls and fall-related morbidity and outcomes specific to the patient's underlying chronic conditions (e.g., Patient Health Questionnaire 9 [PHQ9], disease-specific symptoms, reduced number of disease-specific acute exacerbations or events)
- ○ Disease-specific or all-cause mortality, including fall-related mortality
- ○ Reduced (actual) adverse drug events (frequency and/or severity)
- ○ Health-related quality of life as measured by generally accepted generic health-related quality-of-life measures (e.g., short-form questionnaires, EuroQOL) or disease-specific measures
- ○ Activities of daily living as measured by generally accepted standardized measures of basic and/or instrumental activities of daily living (e.g., Katz, Lawton, or Bristol instruments) or with instruments that have demonstrated validity and reliability
- ○ Patient satisfaction with care
- ○ Work or school absenteeism
- ○ Patient and caregiver participation in medical care and decisionmaking

- Resource Utilization

- ○ Prescription drug costs and appropriate prescription drug expenditures
- ○ Other health care costs
- ○ Health care utilization (hospitalizations, emergency department visits, and physician office visits)

- Harms

- ○ Care fragmentation
- ○ Patient confusion
- ○ Patient decisional conflict
- ○ Patient anxiety
- ○ Increased (actual) adverse drug events
- ○ Patient dissatisfaction with care
- ○ Prescriber confusion
- ○ Prescriber dissatisfaction

*Timing*

- Interventions should have at least two separately identifiable episodes of care (either patient or provider directed or both), but there is no certain amount of time in between those episodes.
- For studies that report outcomes at different points in time, we will only consider outcomes measured after the second episode of care.

*Settings*

- Patients must have been seen in ambulatory settings (e.g., outpatient clinics or private physician offices, long-term care, or retail pharmacy settings).
- However, the MTM intervention itself may be delivered by telephone, via the Web, or in other non-face-to-face modalities, such as video teleconferencing.
- MTM services that are delivered mostly in inpatient settings will not be included.
- Interventions conducted in the United States and other countries and are published in English will be included.

Dated: September 6, 2013.

**Richard Kronick,**

*AHRQ Director.*

[FR Doc. 2013–22579 Filed 9–16–13; 8:45 am]

BILLING CODE 4160–90–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Meeting of the Community Preventive Services Task Force

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice of meeting.

**SUMMARY:** The Centers for Disease Control and Prevention (CDC) announces the next meeting of the Community Preventive Services Task Force (Task Force). The Task Force is an independent, nonfederal, and uncompensated panel. Its members represent a broad range of research, practice, and policy expertise in prevention, wellness and health promotion, and public health, and are appointed by the CDC Director. The Task Force was convened in 1996 by the Department of Health and Human Services (HHS) to identify community preventive programs, services, and policies that increase healthy longevity, save lives and dollars and improve Americans' quality of life. During this meeting, the Task Force will consider the findings of systematic reviews on existing research and issue recommendations. These recommendations provide evidence-based options from which decision makers in communities, companies, health departments, health plans and healthcare systems, non-governmental organizations, and at all levels of government can choose what best meets the needs, preferences, available resources, and constraints of their constituents. The Task Force's recommendations, along with the systematic reviews of the scientific evidence on which they are based, are compiled in the *Guide to Community Preventive Services (Community Guide).*

**DATES:** The meeting will be held on Wednesday, October 23, 2013 from 8:30 a.m. to 5:30 p.m. EDT and Thursday, October 24, 2013 from 8:30 a.m. to 1:00 p.m. EDT.

**ADDRESSES:** The Task Force Meeting will be held at CDC Edward R. Roybal Campus, Tom Harkin Global Communications Center (Building 19), 1600 Clifton Road NE., Atlanta, GA 30333. You should be aware that the meeting location is in a Federal government building; therefore, Federal security measures are applicable. For additional information, please see Roybal Campus Security Guidelines under **SUPPLEMENTARY INFORMATION**. Information regarding meeting logistics will be available on the Community Guide Web site (*www.thecommunityguide.org*), Wednesday, September 25, 2013.

**FOR FURTHER INFORMATION CONTACT:** Andrea Baeder, The Community Guide Branch, Division of Epidemiology, Analysis, and Library Services (proposed), Center for Surveillance, Epidemiology and Laboratory Services (proposed), Office of Public Health Scientific Services (proposed), Centers for Disease Control and Prevention, 1600 Clifton Road, MS–E–69, Atlanta, GA 30333, phone: (404) 498–498–6876, email: *CPSTF@cdc.gov.*

**SUPPLEMENTARY INFORMATION:**

*Purpose:* The purpose of the meeting is for the Task Force to consider the findings of systematic reviews and issue findings and recommendations to help inform decision making about policy, practice, and research in a wide range of U.S. settings.

*Matters to be Discussed:* cancer prevention and control, cardiovascular disease prevention and control, diabetes prevention and control, motor vehicle-related injury prevention, and promoting physical activity.

*Meeting Accessibility:* This meeting is open to the public, limited only by space availability.

**Roybal Campus Security Guidelines**

The Edward R. Roybal Campus is the headquarters of the U.S. Centers for Disease Control and Prevention and is located at 1600 Clifton Road NE., Atlanta, Georgia. The meeting is being held in a Federal government building; therefore, Federal security measures are applicable.

In planning your arrival time, please take into account the need to park and clear security. All visitors must enter the Roybal Campus through the entrance on Clifton Road; the guard force will direct visitors to the designated parking area. Visitors must present government issued photo identification (e.g., a valid federal identification badge, state driver's license, state non-driver's identification card, or passport). Non-United States citizens must present a valid passport, visa, Permanent Resident Card, or other type of work authorization document. All persons entering the building must pass through a metal detector. Visitors will be issued a visitor's ID badge at the entrance to Building 19 and will be escorted in groups of 5–10 persons to the meeting room. All items brought to HHS/CDC are subject to inspection.

Dated: September 11, 2013.

**Tanja Popovic,**

*Deputy Associate Director for Science, Centers for Disease Control and Prevention.*

[FR Doc. 2013–22581 Filed 9–16–13; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[Document Identifiers CMS–1728–94, CMS–1763, CMS–R–267 and CMS–250–254]**

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**ACTION:** Notice.

**SUMMARY:** The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

**DATES:** Comments on the collection(s) of information must be received by the OMB desk officer by *October 17, 2013:*

**ADDRESSES:** When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–6974 *OR,* Email: *OIRA_submission@omb.eop.gov* .

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*
2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*
3. Call the Reports Clearance Office at (410) 786–1326.

**FOR FURTHER INFORMATION CONTACT:** Reports Clearance Office at (410) 786–1326.

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Extension without change of a currently approved collection; *Title of Information Collection:* Home Health Agency Cost Report; *Use:* In accordance with sections 1815(a), 1833(e) and 1861(v)(1)(A) of the Social Security Act, providers of service in the Medicare program are required to submit annual information to achieve reimbursement for health care services rendered to Medicare beneficiaries. In addition, 42 CFR 413.20(b) requires that cost reports are required from providers on an annual basis. Such cost reports are required to be filed with the provider's Medicare contractor. The Medicare contractor uses the cost report not only to make settlement with the provider for the fiscal period covered by the cost report, but also in deciding whether to audit the records of the provider. Section 413.24(a) requires providers receiving payment on the basis of reimbursable cost provide adequate cost data based on their financial and statistical records that must be capable of verification by qualified auditors. Besides determining program reimbursement, the data submitted on the cost reports supports the management of federal programs. The data is extracted from the cost report and used for making projections of Medicare Trust Fund requirements and for analysis to rebase home health agency prospective payment system. The data is also available to Congress, researchers, universities, and other interested parties. While the collection of data is a secondary function of the cost report, its primary function is to reimburse providers for services rendered to program beneficiaries. *Form Number:* CMS–1728–94 (OCN: 0938–0022); *Frequency:* Yearly; *Affected Public:* Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 11,563; *Total Annual Responses:* 11,563; *Total Annual Hours:* 2,613,238. (For policy questions regarding this collection contact Angela Havrilla at 410–786–4516.)

2. *Type of Information Collection Request:* Reinstatement without change of a previously approved collection;

*Title of Information Collection:* Request for Termination of Premium Hospital and Supplementary Medical Insurance; *Use:* The CMS–1763 provides us and the Social Security Administration (SSA) with the enrollee's request for termination of Part B, Part A or both Part B and A premium coverage. The form is completed by an SSA claims or field representative using information provided by the Medicare enrollee during an interview. The purpose of the form is to provide to the enrollee with a standardized format to request termination of Part B, Part A premium coverage or both, explain why the enrollee wishes to terminate such coverage, and to acknowledge that the ramifications of the decision are understood. *Form Number:* CMS–1763 (OCN: 0938–0025); *Frequency:* Once; *Affected Public:* Individuals or households; *Number of Respondents:* 14,000; *Total Annual Responses:* 14,000; *Total Annual Hours:* 5,833. (For policy questions regarding this collection contact Lindsay Smith at 410–786–6843.)

3. *Type of Information Collection Request:* Extension without change of a currently approved collection; *Title of Information Collection:* Medicare Advantage Program Requirements; *Use:* Medicare Advantage (MA) organizations and potential MA organizations (applicants) use the information to comply with the application requirements and the MA contract requirements. We will use this information to: approve contract applications, monitor compliance with contract requirements, make proper payment to MA organizations, determine compliance with the new prescription drug benefit requirements, and to ensure that correct information is disclosed to Medicare beneficiaries (both potential enrollees and enrollees). *Form Number:* CMS–R–267 (OCN: 0938–0753); *Frequency:* Yearly; *Affected Public:* Individuals or households and Business or other for-profits; *Number of Respondents:* 18,043,776; *Total Annual Responses:* 21,935,728; *Total Annual Hours:* 8,529,541. (For policy questions regarding this collection contact Dana Burley at 410–786–4547.)

4. *Type of Information Collection Request:* Reinstatement without change of a previously approved collection; *Title of Information Collection:* Medicare Secondary Payer Information Collection and Supporting Regulations; *Use:* We are seeking to renew approval to collect information from beneficiaries, providers, physicians, insurers, and suppliers on health insurance coverage that is primary to Medicare. Collecting this information allows us to identify those Medicare beneficiaries who are in situations where Medicare is statutorily required to be a secondary payer (MSP), thereby safeguarding the Medicare Trust Fund. Specifically, we use the information to accurately process and pay Medicare claims and to make necessary recoveries in accordance with § 1862(b) of the Act (42 U.S.C.1395y(b)). If an active MSP situation is identified and Medicare is inappropriately billed as primary, the claim will be rejected. The hospitals, other providers, physicians, pharmacies, and suppliers use the information collected (and furnished to them on the denial) to properly bill the appropriate primary payer. Completing an MSP questionnaire and making an accurate MSP determination helps hospitals, other providers, physicians, pharmacies, and suppliers to bill correctly the first time, saving the Medicare Program money and affording Medicare beneficiaries an enhanced level of customer service (which, again, is particularly important in Part D due to the real-time adjudication of claims and the complicated nature of its benefit administration). Insurers, underwriters, third party administrators, and self-insured/self-administered employers use the information to ensure compliance with the law by refunding any identified mistaken payments to Medicare. *Form Number:* CMS–250–254 (OCN: 0938–0214); *Frequency:* Occasionally; *Affected Public:* Individuals and Households, Private Sector, State, Local or Tribal Governments; *Number of Respondents:* 143,070,217; *Total Annual Responses:* 143,070,217; *Total Annual Hours:* 1,788,057. (For policy questions regarding this collection contact Ward Marsh at 410–786–6473.)

Dated: September 11, 2013.

**Martique Jones,**

*Deputy Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. 2013–22515 Filed 9–16–13; 8:45 am]

BILLING CODE 4120–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[Document Identifier CMS–10069]**

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Centers for Medicare & Medicaid Services, HHS.

**ACTION:** Notice.

**SUMMARY:** The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

**DATES:** Comments must be received by November 18, 2013.

**ADDRESSES:** When commenting, please reference the document identifier or OMB control number (OCN). To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number _____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

**FOR FURTHER INFORMATION CONTACT:** Reports Clearance Office at (410) 786–1326.

**SUPPLEMENTARY INFORMATION:**

**Contents**

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

**CMS–10069 Medicare Waiver Demonstration Application**

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

*Information Collections*

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare Waiver Demonstration Application; *Use:* The currently approved application has been used for several congressionally mandated and Administration high priority demonstrations. The standardized format is not controversial and will reduce burden on applicants and reviewers. Responses are strictly voluntary. The standard format will enable us to select proposals that meet our objectives and show the best potential for success. *Form Number:* CMS–10069 (OCN: 0938–0880); *Frequency:* Once; *Affected Public:* Private Sector—Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 75; *Total Annual Responses:* 75; *Total Annual Hours:* 6,000 (For policy questions regarding this collection contact Steven Johnson at 410–786–3332).

Dated: September 11, 2013.

**Martique Jones,**

*Deputy Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. 2013–22516 Filed 9–16–13; 8:45 am]

**BILLING CODE 4120–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2013–N–0662]**

### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Applications for Food and Drug Administration Approval To Market a New Drug: Patent Submission and Listing Requirements

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Fax written comments on the collection of information by October 17, 2013.

**ADDRESSES:** To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0513. Also include the FDA docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** FDA PRA Staff, Office of Operations, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, *PRAStaff@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

**Applications for FDA Approval To Market a New Drug: Patent Submission and Listing Requirements and Application of 30-Month Stays on Approval of Abbreviated New Drug Applications Certifying That a Patent Claiming a Drug Is Invalid or Will Not Be Infringed—(OMB Control Number 0910–0513)—Extension**

Section 505(b)(1) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(b)(1)) requires all new drug application (NDA) applicants to file, as part of the NDA, ''the patent number and the expiration date of any patent which claims the drug for which the applicant submitted the application or which claims a method of using such drug and with respect to which a claim of patent infringement could reasonably be asserted if a person not licensed by the owner engaged in the manufacture, use, or sale of the drug.'' Section 505(c)(2) of the FD&C Act (21 U.S.C. 355(c)(2)) imposes a similar patent submission obligation on holders of approved NDAs when the NDA holder could not have submitted the patent information with its application. Under section 505(b)(1) of the FD&C Act, we publish patent information after approval of an NDA in the list entitled ''Approved Drug Products With Therapeutic Equivalence Evaluations'' (the Orange Book). If patent information is submitted after NDA approval, section 505(c)(2) of the FD&C Act directs us to publish the information upon its submission.

FDA regulations at §§ 314.50(h) (21 CFR 314.50(h)) and 314.53 (21 CFR 314.53) clarify the types of patent information that must and must not be submitted to FDA as part of an NDA, an amendment, or a supplement, and require persons submitting an NDA, an amendment, or a supplement, or submitting information on a patent after NDA approval, to make a detailed patent declaration using Forms FDA 3542 and 3542a.

The reporting burden for submitting an NDA, an amendment, or a supplement in accordance with § 314.50 (a) through (f) and (k) has been estimated by FDA and the collection of information has been approved by OMB under OMB control number 0910–0001. We are not reestimating these approved burdens in this document. Only the reporting burdens associated with patent submission and listing, as explained in the following paragraphs, are estimated in this document.

The information collection reporting requirements are as follows:

Section 314.50(h) requires that an NDA, an amendment, or a supplement

contain patent information described under § 314.53.

Section 314.53 requires that an applicant submitting an NDA, an amendment, or a supplement, except as provided in § 314.53(d)(2), submit on Forms FDA 3542 and 3542a, the required patent information described in this section.

Compliance with the information collection burdens under §§ 314.50(h) and 314.53 consists of submitting with an NDA, an amendment, or a supplement (collectively referred to as ''application'') the required patent declaration(s) on Form FDA 3542a for each ''patent that claims the drug or a method of using the drug that is the subject of the new drug application or amendment or supplement to it and with respect to which a claim of patent infringement could reasonably be asserted if a person not licensed by the owner of the patent engaged in the manufacture, use, or sale of the drug product'' (§ 314.53(b)). Such patents claim the drug substance (active ingredient), drug product (formulation and composition), or method of use. If a patent is issued after the application is filed with FDA, but before the application is approved, the applicant must submit the required patent information on Form FDA 3542a as an amendment to the application, within 30 days of the date of issuance of the patent.

Within 30 days after the date of approval of an application, the applicant must submit Form FDA 3542 for each patent that claims the drug substance (active ingredient), drug product (formulation and composition), or approved method of use for listing in the Orange Book. In addition, for patents issued after the date of approval of an application, Form FDA 3542 must be submitted within 30 days of the date of issuance of the patent.

In the **Federal Register** of June 17, 2013 (78 FR 36193), FDA published a 60-day notice requesting public comment on the proposed collection of information. FDA received one comment from a private citizen. The comment stated, generally, that ''it would be appropriate to require, along with the submission of any patents on the original drug and its formulation, any associated patents or claimed patent submission on metabolites or secondary products of the original drugs.''

(FDA Response) FDA disagrees with the comment. FDA's regulations at § 314.53(b) prohibit submission of drug substance (active ingredient) patents claiming metabolites when the metabolite is not the active ingredient described in the NDA. Section 314.53(b) states, in relevant part: ''For patents that claim the drug substance, the applicant shall submit information only on those patents that claim the drug substance that is the subject of the pending or approved application or that claim a drug substance that is the same as the active ingredient that is the subject of the approved or pending application. . . . Process patents, patents claiming packaging, patents claiming metabolites, and patents claiming intermediates are not covered by this section, and information on these patents must not be submitted to FDA.'' FDA clarified the criteria for listing patent information in the Orange Book in response to a request by the Federal Trade Commission (FTC) in its July 2002 report on ''Generic Drug Entry Prior to Patent Expiration: An FTC Study'' (see 68 FR 36676; June 18, 2003, and *http://www.ftc.gov/os/2002/07/genericdrugstudy.pdf*). FDA determined that a patent claiming a metabolite does not claim an approved drug and thus does not meet the statutory requirements for listing in the Orange Book (see 67 FR 65448 at 65451; October 24, 2002). However, if a patent claims an approved method of using an approved drug to administer a metabolite, the submission of the patent would be permissible as long as all of the conditions for submitting ''method-of-use'' patents are met (see 68 FR 36676 at 36680; June 18, 2003). Section 314.53(c)(2)(i)(M)(*4*) and 314.53(c)(2)(ii)(N)(*4*) require that an applicant submit on Forms FDA 3542a or 3542, as appropriate, information on whether a drug substance patent claims only a metabolite of the active ingredient that is described in the application or supplement, so that FDA can determine whether the patent is eligible for listing in the Orange Book (see section 2.5 of Forms FDA 3542a and 3542).

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

| 21 CFR 314.50 (citing § 314.53) | Number of respondents | Number of responses per respondent | Total annual responses | Average burden per response | Total hours |
|---|---|---|---|---|---|
| Form FDA 3542 | 183 | 2.8 | 512 | 5 | 2,560 |
| Form FDA 3542a | 201 | 2.8 | 563 | 20 | 11,260 |
| Total | | | | | 13,820 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The numbers of patents submitted to FDA for listing in the Orange Book in 2010, 2011, and 2012 were 351, 329, and 458, respectively, for an annual average of 379 (351 patents + 329 patents + 458 patents)/3 years = 379 patents/year). Because many of these individual patents are included in multiple NDA submissions, there could be multiple declarations for a single patent. From our previous review of submissions, we believe that approximately 14 percent of the patents submitted are included in multiple NDA submissions, and thus require multiple patent declarations. Therefore, we estimate that 53 (379 patents × 14 percent) patents will be multiple listings, and there will be a total of 432 patents (379 patents + 53 patents = 432 patents) declared on Form FDA 3542. We approved 84, 93, and 86 NDAs in 2010, 2011, and 2012, respectively, of which approximately 71 percent submitted patent information for listing in the Orange Book. The remaining NDAs submitted Form FDA 3542 as required and declared that there were no relevant patents. We also approved approximately 101, 83, and 101 NDA supplements in 2010, 2011, and 2012, respectively, for which submission of a patent declaration would be required. We estimate there will be 183 instances (based on an average of 88 NDA approvals and 95 supplement approvals per year) where an NDA holder would be affected by the patent declaration requirements, and that each of these NDA holders would, on average, submit 2.8 declarations (432 patent declarations + 76 no relevant patent declarations)/183 instances = 2.8 declarations per instance) on Form FDA 3542. We filed 96, 91, and 112 NDAs in 2010, 2011,

and 2012, respectively, and 100, 91, and 112 NDA supplements in 2010, 2011, and 2012, respectively, for which submission of a patent declaration would be required. We estimate there will be 201 instances (based on an average of 100 NDAs filed and 101 NDA supplements filed per year) where an NDA holder would be affected by the patent declaration requirements. We estimate, based on a proportional increase from the number of declarations for approved NDAs, that there will be an annual total of 563 declarations (201 instances × 2.8 declarations per instance = 563 declarations) on Form FDA 3542a submitted with these applications. Based upon information provided by regulated entities and other information, we previously estimated that the information collection burden associated with § 314.50(h) (citing § 314.53) and FDA Forms 3542 and 3542a will be approximately 5 hours and 20 hours per response, respectively.

Dated: September 11, 2013.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2013–22540 Filed 9–16–13; 8:45 am]

**BILLING CODE 4160–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2013–N–0001]**

### Antiviral Drugs Advisory Committee; Notice of Meeting

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

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

*Name of Committee:* Antiviral Drugs Advisory Committee.

*General Function of the Committee:* To provide advice and recommendations to the Agency on FDA's regulatory issues.

**DATES:** *Date and Time:* The meeting will be held on October 24, 2013, from 8 a.m. to 5 p.m.

*Location:* Sheraton Silver Spring Hotel, Cypress Ballroom, 8777 Georgia Ave., Silver Spring, MD. The hotel phone number is 301–589–0800.

*Contact Person:* Karen Abraham-Burrell, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, FAX: 301–847–8533, email: *AVAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

*Agenda:* The committee will discuss new drug application (NDA) 205123, simeprevir (a hepatitis C virus protease inhibitor), manufactured by Janssen Pharmaceutical Co., with a proposed indication for the treatment of chronic hepatitis C genotype 1 infection, in combination with peginterferon alfa and ribavirin (two medicines approved to treat chronic hepatitis C) in adult patients with compensated liver disease (including cirrhosis) who are treatment-naïve or who have failed previous interferon therapy (pegylated or non-pegylated) with or without ribavirin. Compensated liver disease is a stage in which the liver is damaged but maintains ability to function.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

*Procedure:* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before October 9, 2013. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before October 1, 2013. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by October 2, 2013.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Karen Abraham-Burrell at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 11, 2013.

**Jill Hartzler Warner,**

*Acting Associate Commissioner for Special Medical Programs.*

[FR Doc. 2013–22546 Filed 9–16–13; 8:45 am]

**BILLING CODE 4160–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Drug Abuse; 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 materials, 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 on Drug Abuse Special Emphasis Panel; Ruth L. Kirschstein National Research Service Award (NRSA) Institutional Research Training Grants (T32).

*Date:* October 16, 2013.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

*Contact Person:* Eliane Lazar-Wesley, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 4245, MSC 9550, 6001 Executive Blvd., Bethesda, MD 20892–9550, 301–451–4530, *el6r@nih.gov*.

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel; SEDAPA R25: PAR 13–084 R25 and PAR 10–227.

*Date:* October 17, 2013.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

*Contact Person:* Eliane Lazar-Wesley, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 4245, MSC 9550, 6001 Executive Blvd., Bethesda, MD 20892–9550, 301–451–4530, *el6r@nih.gov*.

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel; HIV/AIDS and Substance Abuse.

*Date:* October 17, 2013.

*Time:* 1:15 p.m. to 3:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* Nadine Rogers, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, 6001 Executive Blvd., Room 4229, MSC 9550, Bethesda, MD 20892–9550, 301–402–2105, *rogersn2@nida.nih.gov*.

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel; DIDARP: Diversity-promoting Institutions Drug Abuse Research Program (R24).

*Date:* October 24, 2013.

*Time:* 1:30 p.m. to 4:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* Nadine Rogers, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, 6001 Executive Blvd., Room 4229, MSC 9550, Bethesda, MD 20892–9550, 301–402–2105, *rogersn2@nida.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: September 11, 2013.

**Michelle Trout,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–22502 Filed 9–16–13; 8:45 am]

**BILLING CODE 4140–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Aging Special Emphasis Panel; Disability and Employment.

*Date:* October 17, 2013.

*Time:* 12:00 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute on Aging, Gateway Building, Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892.

*Contact Person:* Jeannette L. Johnson, Ph.D., Scientific Review Officer, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7705, *JOHNSONJ9@NIA.NIH.GOV*.

*Name of Committee:* National Institute on Aging Special Emphasis Panel; Genetic Regulators.

*Date:* October 17, 2013.

*Time:* 12:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute on Aging, Gateway Building, Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Alicja L. Markowska, Ph.D., DSC, Scientific Review Branch, National Institute on Aging, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–496–9666, *markowsa@nia.nih.gov*.

*Name of Committee:* National Institute on Aging Special Emphasis Panel; Alzheimer Network.

*Date:* October 24, 2013.

*Time:* 11:00 a.m. to 2:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute on Aging, Gateway Building, Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Alexander Parsadanian, Ph.D., Scientific Review Officer, National Institute on Aging, Gateway Building 2C/212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–496–9666, *PARSADANIANA@NIA.NIH.GOV*.

*Name of Committee:* National Institute on Aging Special Emphasis Panel; Aging Bone.

*Date:* October 25, 2013.

*Time:* 11:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute on Aging, Gateway Building, Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Alicja L. Markowska, Ph.D., DSC, Scientific Review Branch, National Institute on Aging, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–496–9666, *markowsa@nia.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: September 11, 2013.

**Melanie J. Gray,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–22491 Filed 9–16–13; 8:45 am]

**BILLING CODE 4140–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Deafness and Other Communication Disorders; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Deafness and Other Communication

Disorders Special Emphasis Panel; VSL Fellowships. October 16, 2013.

*Time:* 1:00 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, Room 8359, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

*Contact Person:* Sheo Singh, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, 6001 Executive Blvd., Room 8351, Bethesda, MD 20892, 301–496–8683, *singhs@nidcd.nih.gov.*

*Name of Committee:* National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; NIDCD Chemosensory Fellowship Applications Review. October 17, 2013.

*Time:* 11:00 a.m. to 1:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, Room 8359, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

*Contact Person:* Shiguang Yang, DVM, Ph.D., Scientific Review Officer, Division of Extramural Activities, NIDCD, NIH, 6001 Executive Blvd., Room 8349, Bethesda, MD 20892, 301–496–8683.

*Name of Committee:* National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; P30 Review. October 18, 2013.

*Time:* 2:00 p.m. to 3:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

*Contact Person:* Christine A. Livingston, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institutes of Health/NIDCD, 6001 Executive Blvd.—Room 8343, Bethesda, MD 20892, (301) 496–8683, *livingsc@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: September 11, 2013.

**Melanie J. Gray,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–22493 Filed 9–16–13; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors, NHLBI.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Heart, Lung, and Blood Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Board of Scientific Counselors, NHLBI.

*Date:* October 21, 2013.

*Time:* 8:00 a.m. to 3:00 p.m.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* National Institutes of Health, Building 31, 5A05, 31 Center Drive, Bethesda, MD 20892.

*Contact Person:* Robert S Balaban, Ph.D., Scientific Director, Division of Intramural Research National Institutes of Health, NHLBI Building 10, CRC, 4th Floor, Room 1581, 10 Center Drive, Bethesda, MD 20892, 301/496–2116.

Information is also available on the Institute's/Center's home page: *www.nhlbi.nih.gov/meetings/index.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: September 11, 2013.

**Michelle Trout,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–22504 Filed 9–16–13; 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:* Vascular and Hematology Integrated Review Group; Hypertension and Microcirculation Study Section.

*Date:* October 10, 2013.

*Time:* 8:00 a.m. to 7:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Washington Hilton Hotel, 1919 Connecticut Ave. NW., Washington, DC 20009.

*Contact Person:* Ai-Ping Zou, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, 301–408–9497, *zouai@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Special: Systemic Injury By Environmental Exposure.

*Date:* October 16–17, 2013.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Patricia Greenwel, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892, 301–435–1169, *greenwep@csr.nih.gov.*

*Name of Committee:* Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Oral, Dental and Craniofacial Sciences Study Section.

*Date:* October 16–17, 2013.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Doubletree Hotel Bethesda, (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Yi-Hsin Liu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, 301–435–1781, *liuyh@csr.nih.gov.*

*Name of Committee:* Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Skeletal Biology Development and Disease Study Section.

*Date:* October 16–17, 2013.

*Time:* 8:00 a.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

*Contact Person:* Priscilla B. Chen, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787, *chenp@csr.nih.gov.*

*Name of Committee:* Integrative, Functional and Cognitive Neuroscience

Integrated Review Group; Auditory System Study Section.

*Date:* October 16–17, 2013.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Washington Plaza Hotel, 10 Thomas Circle NW., Washington, DC 20005.

*Contact Person:* Lynn E. Luethke, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5166, MSC 7844, Bethesda, MD 20892, (301) 806–3323, *luethkel@csr.nih.gov.*

*Name of Committee:* Oncology 1-Basic Translational Integrated Review Group; Tumor Cell Biology Study Section.

*Date:* October 16–17, 2013.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hotel Kabuki, 1625 Post Street, San Francisco, CA 94115.

*Contact Person:* Charles Morrow, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6202, MSC 7804, Bethesda, MD 20892, 301–451–4467, *morrowcs@csr.nih.gov.*

*Name of Committee:* Cell Biology Integrated Review Group; Biology of the Visual System Study Section.

*Date:* October 16–17, 2013.

*Time:* 8:00 a.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Michael H. Chaitin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7850, Bethesda, MD 20892, (301) 435–0910, *chaitinm@csr.nih.gov.*

*Name of Committee:* Bioengineering Sciences & Technologies Integrated Review Group; Gene and Drug Delivery Systems Study Section.

*Date:* October 16–17, 2013.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Serrano Hotel, 405 Taylor Street, San Francisco, CA 94102.

*Contact Person:* Amy L. Rubinstein, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5152, MSC 7844, Bethesda, MD 20892, 301–408–9754, *rubinsteinal@csr.nih.gov.*

*Name of Committee:* Brain Disorders and Clinical Neuroscience Integrated Review Group; Acute Neural Injury and Epilepsy Study Section.

*Date:* October 16, 2013.

*Time:* 8:00 a.m. to 6:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Washington Plaza Hotel, 10 Thomas Circle, Washington, DC 20005.

*Contact Person:* Seetha Bhagavan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892, (301) 237–9838, *bhagavas@csr.nih.gov.*

*Name of Committee:* Genes, Genomes, and Genetics Integrated Review Group; Genomics, Computational Biology and Technology Study Section.

*Date:* October 16–17, 2013.

*Time:* 8:30 a.m. to 1:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Avenue Hotel Chicago, 160 E. Huron Street, Chicago, IL 60611.

*Contact Person:* Barbara J. Thomas, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2218, MSC 7890, Bethesda, MD 20892, 301–435–0603, *bthomas@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 11, 2013.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–22492 Filed 9–16–13; 8:45 am]

**BILLING CODE 4140–01–P**

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## 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:* Infectious Diseases and Microbiology Integrated Review Group; Virology—A Study Section.

*Date:* October 3–4, 2013.

*Time:* 8:30 a.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Embassy Suites Baltimore—Downtown, 222 St. Paul Place, Baltimore, MD.

*Contact Person:* Joanna M. Pyper, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3198, MSC 7808, Bethesda, MD 20892, (301) 435–1151, *pyperj@csr.nih.gov.*

*Name of Committee:* Infectious Diseases and Microbiology Integrated Review Group; Clinical Research and Field Studies of Infectious Diseases Study Section.

*Date:* October 7–8, 2013.

*Time:* 8:30 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:* Soheyla Saadi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3211, MSC 7808, Bethesda, MD 20892, 301–435–0903, *saadisoh@csr.nih.gov.*

*Name of Committee:* Infectious Diseases and Microbiology Integrated Review Group; Bacterial Pathogenesis Study Section.

*Date:* October 9, 2013.

*Time:* 8:00 a.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Courtyard Chicago Downtown/River North, 30 East Hubbard, Chicago, IL 60611.

*Contact Person:* Richard G. Kostriken, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3192, MSC 7808, Bethesda, MD 20892, 301–402–4454, *kostrikr@csr.nih.gov.*

*Name of Committee:* Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Cellular, Molecular and Integrative Reproduction Study Section.

*Date:* October 9, 2013.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Gary Hunnicutt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, 301–435–0229, *hunnicuttgr@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR11–45: International Research in Infectious Diseases including AIDS (IRIDA).

*Date:* October 9, 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:* Soheyla Saadi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3211, MSC 7808, Bethesda, MD 20892, 301–435–0903, *saadisoh@csr.nih.gov.*

*Name of Committee:* Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Neurogenesis and Cell Fate Study Section.

*Date:* October 9, 2013.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Residence Inn Arlington Capital View, 2850 South Potomac Avenue, Arlington, VA 22202.

*Contact Person:* Joanne T. Fujii, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7850, Bethesda, MD 20892, (301) 435–1178, *fujiij@csr.nih.gov.*

*Name of Committee:* Population Sciences and Epidemiology Integrated Review Group; Kidney, Nutrition, Obesity and Diabetes Study Section.

*Date:* October 10–11, 2013.

*Time:* 8:00 a.m. to 12:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Melrose Hotel, 2430 Pennsylvania Ave. NW., Washington, DC 20037.

*Contact Person:* Fungai Chanetsa, Ph.D., MPH, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3135, MSC 7770, Bethesda, MD 20892, 301–408–9436, *fungai.chanetsa@nih.hhs.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR–11–315 Systems Science and Health in the Behavioral and Social Sciences.

*Date:* October 10, 2013.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Tomas Drgon, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3152, MSC 7770, Bethesda, MD 20892, 301–435–1017, *tdrgon@csr.nih.gov.*

*Name of Committee:* Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Cellular and Molecular Biology of Neurodegeneration Study Section.

*Date:* October 10–11, 2013.

*Time:* 8:30 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Westin Arlington Gateway, 801 N. Glebe Road, Arlington, VA 22203.

*Contact Person:* Laurent Taupenot, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4183, MSC 7850, Bethesda, MD 20892, 301–435–1203, *taupenol@csr.nih.gov.*

*Name of Committee:* Biobehavioral and Behavioral Processes Integrated Review Group; Language and Communication Study Section.

*Date:* October 11, 2013.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Doubletree Hotel Washington, 1515 Rhode Island Ave. NW., Washington, DC 20005.

*Contact Person:* Biao Tian, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3180, MSC 7848, Bethesda, MD 20892, 301–437–9858, *tianbi@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 11, 2013.

**Michelle Trout,**

*Program Analyst; Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–22503 Filed 9–16–13; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R6–ES–2013–N206; FXES11130600000D2–123–FF06E00000]**

### Endangered and Threatened Wildlife and Plants; Recovery Permit Applications

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, invite the public to comment on the following application to conduct certain activities with endangered or threatened species. With some exceptions, the Endangered Species Act of 1973, as amended (Act), prohibits activities with endangered and threatened species unless a Federal permit allows such activity. The Act requires that we invite public comment before issuing these permits.

**DATES:** To ensure consideration, please send your written comments by October 17, 2013.

**ADDRESSES:** You may submit comments or requests for copies or more information by any of the following methods. Alternatively, you may use one of the following methods to request hard copies or a CD–ROM of the documents. Please specify the permit you are interested in by number (e.g., Permit No. TE–XXXXXX).

- *Email: permitsR6ES@fws.gov.* Please refer to the respective permit number (e.g., Permit No. TE–XXXXXX) in the subject line of the message.
- *U.S. Mail:* Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 25486–DFC, Denver, CO 80225.
- *In-Person Drop-off, Viewing, or Pickup:* Call (303) 236–4212 to make an appointment during regular business hours at 134 Union Blvd., Suite 645, Lakewood, CO 80228.

**FOR FURTHER INFORMATION CONTACT:** Kathy Konishi, Permit Coordinator, Ecological Services, (303) 236–4212 (phone); *permitsR6ES@fws.gov* (email).

**SUPPLEMENTARY INFORMATION:**

### Background

The Act (16 U.S.C. 1531 *et seq.*) prohibits activities with endangered and threatened species unless a Federal permit allows such activity. Along with our implementing regulations in the Code of Federal Regulations (CFR) at 50 CFR part17, the Act provides for permits and requires that we invite public comment before issuing these permits.

A permit granted by us under section 10(a)(1)(A) of the Act authorizes the permittee to conduct activities with U.S. endangered or threatened species for scientific purposes, enhancement of propagation or survival, or interstate commerce (the latter only in the event that it facilitates scientific purposes or enhancement of propagation or survival). Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

### Applications Available for Review and Comment

We invite local, State, and Federal agencies and the public to comment on the following application. Documents and other information the applicant has submitted with this application is available for review, subject to the requirements of the Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552).

### Permit Application Number: TE046795

*Applicant:* Colorado State University, Department of Fish, Wildlife and Conservation Biology, Fort Collins, CO.

The applicant requests an amendment to hold captive-reared bony-tail chub (*Gila elegans*) and humpback chub (*Gila cypha*) in aquaria for public display and education for the purpose of enhancing the species' survival.

### National Environmental Policy Act

In compliance with the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), we have made an initial determination that the proposed activities in this permit are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement (516 DM 6 Appendix 1, 1.4C(1)).

### Public Availability of Comments

All comments and materials we receive in response to this request will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section of this notice.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

## Authority

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*).

Dated: September 10, 2013.

**Nicole Alt,**

*Acting Assistant Regional Director, Mountain-Prairie Region.*

[FR Doc. 2013–22550 Filed 9–16–13; 8:45 am]

BILLING CODE 4310–55–P

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R1–ES–2013–N179; FXES11130100000D2–134–FF01E00000]**

## Experimental Removal of Barred Owls To Benefit Threatened Northern Spotted Owls; Record of Decision for Final Environmental Impact Statement

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, announce the availability of the record of decision (ROD) for the final environmental impact statement (Final EIS) for experimental removal of barred owls to benefit threatened northern spotted owls. We completed a thorough analysis of the environmental, social, and economic considerations and presented it in our Final EIS, which we released to the public on July 24, 2013.

**DATES:** The Regional Director, Pacific Region, U.S. Fish and Wildlife Service, signed the ROD on September 10, 2013.

**ADDRESSES:** You may view or obtain copies of the Final EIS and ROD by any of the following methods:

- *Agency Web site:* Download a copy of the document at *http://www.fws.gov/oregonfwo.*
- *Telephone:* Call and leave a message requesting the Final EIS or Record of Decision hard copy or CD, at 503–231–6901.
- *In-Person Viewing or Pickup:* Call the U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, at 503–231–6179 to make an appointment to review or pick up a copy of the Final EIS and ROD during regular business hours at the Oregon Fish and Wildlife Office, 2600 SE 98th Ave., Suite 100, Portland, OR 97266.
- *U.S. Mail:* Paul Henson, State Supervisor, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE. 98th Ave., Suite 100, Portland, OR 97266.

**FOR FURTHER INFORMATION CONTACT:** Paul Henson, State Supervisor, Oregon Fish and Wildlife Office, at 503–231–6179. If you use a telecommunications device for the deaf, please call the Federal Information Relay Service at 800–877–8339.

**SUPPLEMENTARY INFORMATION:**

## Introduction

We, the U.S. Fish and Wildlife Service (Service), announce the availability of the ROD, which we developed in compliance with the agency decision-making requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.;* NEPA) and its implementing regulations at 40 CFR 1506.6. We completed a thorough analysis of impacts on the human environment in the Final EIS for experimental removal of barred owls to benefit threatened northern spotted owls. The Final EIS evaluates the impacts of eight action alternatives and a no-action alternative related to: (1) Federal involvement in barred owl removal experiments, and (2) the possible issuance of a scientific collecting permit under the Migratory Bird Treaty Act (16 U.S.C. 703–712; MBTA) for lethal and nonlethal take of barred owls. The ROD documents the rationale for our decision.

Based on our review of the alternatives and their environmental consequences as described in our Final EIS, we selected a Preferred Alternative based on a combination of the features of Alternatives 2 and 3. The Preferred Alternative consists of a demography study conducted on four study areas. The study would be conducted in western Washington, western Oregon, and northwestern California. The action alternatives vary by the number and location of study areas, the type of experimental design, duration of the study, and the method of barred owl removal.

## Background

The Service listed the northern spotted owl (*Strix occidentalis caurina*) as a threatened species under the Endangered Species Act (16 U.S.C. 1531 *et seq.;* Act) in 1990, based primarily on habitat loss and degradation (55 FR 26114). As a result, conservation efforts for the northern spotted owl have been largely focused on habitat protection. While our listing rule noted that the long-term impact of barred owls (*Strix varia*) on the spotted owl was of considerable concern, the scope and severity of this threat was largely unknown at that time (55 FR 26114, p. 26190). Competition from barred owls is identified as one of the main threats to the northern spotted owl in the 2011 *Revised Northern Spotted Owl Recovery Plan* (Recovery Plan) (USFWS 2011, p. III–62). The Recovery Plan summarized information available since our listing rule and found that competition from barred owls now poses a significant and immediate threat to the northern spotted owl throughout its range (USFWS 2011, pp. B–10 through B–12). To address this threat, the Recovery Plan recommends designing and implementing large-scale controlled experiments to assess the effects of barred owl removal on spotted owl site occupancy, reproduction, and survival (USFWS 2011, p. III–65).

Historically, the barred owl did not occur in the Pacific Northwest. In the past century, barred owls have expanded their range westward, reaching the range of the northern spotted owl in British Columbia by about 1959. Barred owl populations continue to expand southward within the range of the northern spotted owl, the population of barred owls behind the expansion-front continues to increase, and barred owls now outnumber spotted owls in many portions of the northern spotted owl's range (Pearson and Livezey 2003, p. 272).

There is strong evidence to indicate that barred owls are negatively affecting northern spotted owl populations. Barred owls displace spotted owls from high-quality habitat (Kelley *et al.* 2003, p. 51; Pearson and Livezey 2003, p. 274; Courtney *et al.,* pp. 7–27 through 7–31; Gremel 2005, pp. 9, 11, 17; Hamer *et al.* 2007, p. 764; Dugger *et al.* 2011, pp. 2464–1466), reducing their survival and reproduction (Olson *et al.* 2004, p. 1048; Anthony *et al.* 2006, p. 32; Forsman *et al.* 2011, pp. 41–43, 69–70). In addition, barred owls may physically attack spotted owls (Gutierrez *et al.* 2007, p. 187). These effects may help explain declines in northern spotted owl territory occupancy associated with barred owls in the Northwest, and reduced northern spotted owl survivorship and sharp population declines in Washington (e.g., in northern Washington, spotted owl populations declined by as much as 55 percent between 1996 and 2006) (Anthony *et al.* 2006, pp. 21, 30, 32;

Forsman *et al.* 2011, pp. 43–47, 65–66)). Without management intervention, it is reasonable to expect that competition from barred owls may cause extirpation of the northern spotted owl from all or a substantial portion of its historical range, reducing its potential for survival and recovery.

**Public Involvement**

On December 10, 2009, the Service published a notice of intent to prepare an environmental impact statement related to experimental removal of barred owls for the conservation benefit of threatened northern spotted owls (notice of intent) in the **Federal Register** (74 FR 65546), to solicit participation of: Federal, State, and local agencies; Tribes; and the public to determine the scope of the EIS and provide input on issues associated with the proposed experiment. In addition to the publication of the notice of intent, the scoping process included informal stakeholder and agency consultations, and electronic or mailed notification to over 1,000 interested parties. Public scoping lasted until January 11, 2010. A scoping report is included in Appendix B of the Final EIS.

In accordance with the NEPA, the Draft EIS was circulated for public review and comment. The public review period was initiated with the publication of the notice of availability in the **Federal Register** on March 8, 2012 (77 FR 14036). We conducted one public meeting in Seattle on May 3, 2012, and five informational webinars for the public. Comments were due June 6, 2012. A summary of the comments and our written responses are appended to the Final EIS. We published a notice of availability of the Final EIS in the **Federal Register** on July 24, 2013 (78 FR 44588).

**Alternatives**

The action alternatives vary by the number and location of study areas, the method of barred owl removal (lethal, or a combination of lethal and nonlethal), and the type of experimental design (demography vs. occupancy). All action alternatives are based on a simple treatment and control study approach. Under this approach, study areas are divided into two comparable segments. Barred owls are removed from the treatment area but not from the control area. Spotted owl populations are measured using the same methodology on both areas, and the population measures (occupancy, survival, reproduction, and population trend) are compared between the control and treatment areas.

The removal of barred owls under the experiment would occur over a period of 3 to 10 years, depending on the alternative. The action alternatives include from 1 to 11 study areas, including from 0.31 to 6.55 percent of the northern spotted owl's habitat. A brief description of each alternative follows.

*No-Action Alternative*

Under the No-action Alternative, the Service would not conduct experimental removal of barred owls, thus not implementing one of the recovery actions set forth in the Recovery Plan (USFWS 2001, p. III–65). Data that would inform future barred owl management strategies would not be gathered.

*Preferred Alternative*

The Preferred Alternative is based on a combination of the features of Alternatives 2 and 3. The Preferred Alternative consists of a demography study located within four study areas. These study areas include existing spotted owl demography study areas where long-term monitoring of northern spotted owl populations has occurred (Lint *et al.* 1999, p. 17; Lint 2005, p. 7) and areas with comparable levels of spotted owl data. A combination of lethal and nonlethal removal methods would be used.

*Alternative 1*

Alternative 1 consists of a demography study in a single study area with existing pre-treatment spotted owl demography data. The study area would be located within one of the nine existing spotted owl demography study areas where long-term monitoring of northern spotted owl populations has occurred (Lint *et al.* 1999, p. 17; Lint 2005, p. 7). Only lethal removal methods would be used in this alternative.

*Alternative 2*

Alternative 2 consists of a demography study in three study areas, which would be located within existing spotted owl demography study areas and distributed across the range of the northern spotted owl. A combination of lethal and nonlethal removal methods would be used.

*Alternative 3*

Alternative 3 consists of a demography study in two study areas. Barred owl removal would occur outside of existing spotted owl demography study areas, but within areas that have adequate data to conduct pre-removal demography analyses. A combination of lethal and nonlethal removal methods would be used.

*Alternative 4*

Alternative 4 includes two subalternatives, 4a and 4b. Each subalternative consists of a demography study in two study areas outside existing spotted owl demography study areas. Each subalternative uses a combination of lethal and nonlethal removal methods. Subalternatives 4a and 4b differ in that 4a delays barred owl removal to collect pre-treatment data for comparison with treatment data, whereas 4b starts removal immediately and foregoes pre-treatment data collection.

*Alternative 5*

Alternative 5 consists of an occupancy study approach in three study areas. Barred owl removal would occur on areas outside of existing spotted owl demography study areas. Only lethal removal methods would be applied in this alternative.

*Alternative 6*

Alternative 6 includes two subalternatives, 6a and 6b. Each subalternative consists of an occupancy study in three study areas. Barred owl removal would occur on areas outside of existing spotted owl demography study areas. Each subalternative uses a combination of lethal and nonlethal removal methods. Subalternatives 6a and 6b differ in that 6a delays removal to collect pre-treatment data for comparison with treatment data, whereas 6b starts removal immediately and foregoes pre-treatment data collection.

*Alternative 7*

Alternative 7 consists of a combination of demography and occupancy analyses across 11 study areas, some of which have current data. Three existing spotted owl demographic study areas would be included within these study areas. A combination of lethal and nonlethal removal methods would be used.

*Selected Alternative*

We selected the Preferred Alternative developed following public review of the Draft EIS. The Preferred Alternative consists of a demography study in four study areas. Barred owl removal would occur on the Cle Elum Study Area in Washington and the Hoopa (Willow Creek) Study Area in California from Alternative 2, the Union/Myrtle (Klamath) Study Area in southern Oregon from Alternative 3, and one half of the combined Oregon Coast Ranges

and Veneta Study Areas in northern Oregon. This last study area is a combination of study areas from Alternative 2 and 3. A combination of lethal and non-lethal removal methods would be used.

**Decision Rationale**

Our decision is to adopt the Preferred Alternative as described in the Final EIS for experimental removal of barred owls to benefit threatened northern spotted owls. We provide a brief summary of our decision below; for the full basis of our decision, please see the Final EIS. We choose to implement an alternative with elements that would provide for a strong, scientifically credible experiment with a high power to detect the effect of the barred owl removal on spotted owl populations, and that would provide results applicable across the range of the northern spotted owl in a timely manner.

To provide for high scientific credibility and power to detect any effect of the experimental removal of barred owls on spotted owl populations, we selected a demography study approach utilizing study areas with preexisting data on spotted owl populations and trends. The use of a demography study approach and the long history of spotted owl population data on these study areas provides for a very robust experiment.

To ensure the results are applicable across the range of the northern spotted owl, we selected four study areas distributed in Washington, Oregon, and California. This includes study areas in Washington with a long history of barred owl presence, high barred owl density, and low spotted owl site occupancy. Oregon study areas have a shorter history of high barred owl populations and greater spotted owl site occupancy. The California study area is the most recently invaded, has lower barred owl densities, and higher spotted owl site occupancy. Thus, the selected alternative will provide information on the efficacy of the removal in all types of barred owl population condition.

The combination of the number of study areas and the available pre-treatment data provides for a timely result, with the study taking an estimated 4 years of removal to reach significant results.

The use of a combination of lethal and non-lethal removal methods allows us to reduce the number of barred owl that would be killed under this study. To the extent that we are able to find organizations with the appropriate permits, adequate facilities to provide a high quality of care for the life of the bird, and an interest in having barred owls for educational purposes, we would capture birds to fill the opportunities. Our initial overtures to zoos and zoological parks resulted in interest in placing five individual barred owls. We will continue to look for opportunities to place barred owls, but given the expense, difficulty, and type of facility needed, we do not anticipate being able to place a large number of barred owls.

**National Environmental Policy Act Compliance**

We provide this notice under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and its implementing regulations in the Code of Federal Regulations (CFR) at 40 CFR 1506.6. We also publish this notice under authority of the Migratory Bird Treaty Act (16 U.S.C. 703–712) and its specific implementing regulations at 50 CFR 10.13 and 50 CFR 21.23.

Dated: September 10, 2013.

**Robyn Thorson,**

*Regional Director, Pacific Region, U.S. Fish and Wildlife Service, Portland, Oregon.*

[FR Doc. 2013–22556 Filed 9–16–13; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLAZC01000.L51010000.FX0000. LVRWA09A2310; AZA32315AA]**

### Notice of Availability of the Record of Decision for the Mohave County Wind Farm Project, Mohave County, AZ

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** The Bureau of Land Management (BLM) announces the availability of the Record of Decision (ROD) for the Mohave County Wind Farm Project (Project). The Acting Assistant Secretary for Land and Minerals Management approved the ROD on June 26, 2013, which constitutes the final decision of the Department of the Interior.

**ADDRESSES:** Copies of the ROD are available for public inspection at the BLM's Kingman Field Office, 2755 Mission Boulevard, Kingman, AZ 86401, and the BLM Arizona State Office, One North Central Avenue, Suite 800, Phoenix, AZ 85004. Interested parties may also view the ROD at the following Web site: *http://www.blm.gov/az/st/en/prog/energy/wind/mohave.html*.

**FOR FURTHER INFORMATION CONTACT:** Jackie Neckels, Environmental Coordinator, BLM Renewable Energy Coordination Office, Arizona State Office, One North Central Avenue, Suite 800, Phoenix, AZ 85004; phone: 602–417–9262; or email: *jneckels@blm.gov*. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** BP Wind Energy North America, Inc. (BP Wind Energy) proposes to construct, operate, maintain, and eventually decommission the Project, a wind-powered electrical generation facility located approximately 40 miles northwest of the City of Kingman in Mohave County, Arizona. BP Wind Energy applied to the BLM for a right-of-way (ROW) grant and to the Bureau of Reclamation (Reclamation) for a right-of-use (ROU) contract for the Project that would produce up to 500-megawatts (MW) of power. BP Wind Energy also applied to Western Area Power Administration (Western) for interconnection to either the 345-kilovolt (kV) Liberty-Mead transmission line or the 500-kV Mead-Phoenix transmission line that crosses the Project area. Western has applied to the BLM for a ROW grant for construction, operation, and maintenance of a switching station that would allow transmission of electricity generated by the Project.

The approved Project includes up to 243 wind turbine generators and associated infrastructure on approximately 35,329 acres of BLM-managed land and approximately 2,781 acres of Reclamation-administered land. The Project components include, but are not limited to, turbine generators with a power output ranging from 1.5 to 3.0 MW each, pad mounted transformers, access roads, an underground 34.5-kV electrical collection system, distribution line, overhead transmission line, an operation and maintenance building, two temporary laydown/staging areas with concrete batch plant operations, temporary and permanent meteorological towers, switchyard, two substations, water wells, temporary water pipeline, and temporary use of the Detrital Wash materials pit as a material source.

In compliance with the National Environmental Policy Act of 1969, as amended, and Title V of the Federal

Land Policy and Management Act of 1976, as amended, the BLM, as lead agency, and Reclamation and Western, as cooperating agencies, prepared the Draft Environmental Impact Statement (EIS) that was published in the **Federal Register** on April 27, 2012, (77 FR 25165). Subsequently, the agencies held public meetings on the document in the communities of Kingman, Peach Springs, White Hills, and Dolan Springs, Arizona. The Final EIS was published on May 17, 2013, (78 FR 29131). The National Park Service, the Arizona Game and Fish Department, Mohave County, and the Hualapai Tribe were also cooperating agencies.

The No Action Alternative and four action alternatives were analyzed in the Final EIS. The proposed action, Alternative A, called for the use of approximately 38,099 acres of BLM-managed land and 8,960 acres of Reclamation-administered land. Alternative B would require approximately 30,872 acres of BLM-managed land and 3,848 acres of Reclamation-administered land. Alternative C called for the use of 30,178 acres of BLM-managed land and approximately 5,124 acres of Reclamation-administered land. Alternative E would require approximately 35,329 acres of BLM-managed land and 2,781 acres of Reclamation-administered land. Alternative E is BLM's and Reclamation's preferred alternative and represents a combination of Alternatives A and B.

It is the decision of the BLM and Reclamation to approve Alternative E, including associated infrastructure and a switching station, and issue ROW grant and ROU contract, respectively, across Federal lands for the construction, operation, maintenance, and decommissioning of the Project to BP Wind Energy; and for the BLM to issue a ROW grant to Western for the construction, operation, and maintenance of a switching station, subject to terms and conditions of the ROW grants and ROU contract, plan of development, and mitigation measures. Full implementation of this decision is contingent upon BP Wind Energy and Western obtaining all applicable permits and approvals. This decision is based on the information contained in the Draft and Final EIS.

Because this decision is approved by the Acting Assistant Secretary for Land and Minerals Management, it is not subject to administrative appeal (43 CFR 4.5 and 4.410(a)(3)).

**Authority:** 40 CFR 1506.6.

**Jamie Connell,**

*Acting Deputy Director of Operations, Bureau of Land Management.*

[FR Doc. 2013–22575 Filed 9–16–13; 8:45 am]

**BILLING CODE 4310–32–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 332–540]**

### Digital Trade in the U.S. and Global Economies, Part 2; Submission of Questionnaire for OMB Review

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice of submission of request for approval of a questionnaire to the Office of Management and Budget. This notice is being given pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

*Purpose of Information Collection:* The information requested by the questionnaire is for use by the Commission in connection with investigation No. 332–540, *Digital Trade in the U.S. and Global Economies, Part 2.* The investigation was instituted under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) at the request of the U.S. Senate Committee on Finance. The Commission expects to deliver its report to the Committee by July 14, 2014.

**Summary of Proposal**

(1) Number of forms submitted: 1.

(2) Title of form: Digital Trade Questionnaire.

(3) Type of request: New.

(4) Frequency of use: Industry questionnaire, single data gathering, scheduled for 2013.

(5) Description of respondents: Companies in the United States in industries that the USITC considers particularly digitally-intensive (i.e. firms that make particularly intensive use of the Internet and Internet technology in their business activities).

(6) Estimated number of questionnaires to be mailed: 10,000.

(7) Estimated total number of hours to complete the questionnaire per respondent: 30 hours.

(8) Information obtained from the questionnaire that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

*Additional Information or Comment:* Copies of the questionnaire and supporting documents may be obtained from project leader James Stamps (*james.stamps@usitc.gov* or 202–205–3227) or deputy project leader David Coffin (david.coffin@usitc.gov or 202–205–2232). Comments about the proposal should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Room 10102 (Docket Library), Washington, DC 20503, Attention: Docket Librarian. All comments should be specific, indicating which part of the questionnaire is objectionable, describing the concern in detail, and including specific suggested revision or language changes. Copies of any comments should be provided to Andrew Martin, Chief Information Officer, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, who is the Commission's designated Senior Official under the Paperwork Reduction Act.

General information concerning the Commission may also be obtained by accessing its Internet address (*http://www.usitc.gov*). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Secretary at 202–205–2000.

By order of the Commission.

Issued: September 12, 2013.

**Lisa R. Barton,**

*Acting Secretary to the Commission.*

[FR Doc. 2013–22545 Filed 9–16–13; 8:45 am]

**BILLING CODE 7020–02–P**

## JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

### Advisory Committee Meeting

**AGENCY:** Joint Board for the Enrollment of Actuaries.

**ACTION:** Notice of Federal Advisory Committee meeting.

**SUMMARY:** The Executive Director of the Joint Board for the Enrollment of Actuaries gives notice of a closed meeting of the Advisory Committee on Actuarial Examinations.

**DATES:** The meeting will be held on October 18, 2013, from 8:30 a.m. to 5:00 p.m.

**ADDRESSES:** The meeting will be held at Crowne Plaza San Antonio Riverwalk, 111 East Pecan Street, San Antonio, TX 78205.

**FOR FURTHER INFORMATION CONTACT:** Patrick W. McDonough, Executive

Director of the Joint Board for the Enrollment of Actuaries, 703–414–2173.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet at Crowne Plaza San Antonio Riverwalk, 111 East Pecan Street, San Antonio, TX, on October 18, 2013, from 8:30 a.m. to 5:00 p.m.

The purpose of the meeting is to discuss topics and questions that may be recommended for inclusion on future Joint Board examinations in actuarial mathematics, pension law and methodology referred to in 29 U.S.C. 1242(a)(1)(B).

A determination has been made as required by section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App., that the subject of the meeting falls within the exception to the open meeting requirement set forth in Title 5 U.S.C. 552b(c)(9)(B), and that the public interest requires that such meeting be closed to public participation.

Dated: September 11, 2013.

**Patrick W. McDonough,**

*Executive Director, Joint Board for the Enrollment of Actuaries.*

[FR Doc. 2013–22529 Filed 9–16–13; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

On September 9, 2013, the Department of Justice lodged a proposed Consent Decree (''Decree'') in the United States District Court for the District of South Carolina, Florence Division in the lawsuit entitled *United States of America and the State of South Carolina by and through the Department of Health and Environmental Control (Plaintiffs)* v. *Town of Timmonsville (Defendant) and the City of Florence,* (permissively joined party pursuant to Fed. R. Civ. P. 20(a)(2)(A)), Civil Action No. 4:13–CV–01522–RBH.

This Decree represents a settlement of claims against the Defendant Town of Timmonsville (''Town'' or ''Timmonsville'') for violations of Section 504 of the Clean Water Act, 33 U.S.C. 1364(a), and Section 44–55–90(C)(2002 & Supp. 2011) of the South Carolina Safe Drinking Water Act (''SC SDWA''), S.C. Code Ann. § 44–55–90 (C) (2002 & Supp. 2011), Section 309(b) and (d) of the Clean Water Act, 33 U.S.C. 1319(b) and (d), Sections 48–1–50(4) and 48–1–330 of the South Carolina Pollution Control Act (''SCPCA''), S.C. Ann. §§ 48–1–50(4) and 48–1–330; and Sections 44–55–90(b)(1) and (C) of the SC SDWA, S.C. Code Ann. §§ 44–55–90(B)(1) and (C).

The Town entered into an Agreement to Convey Utility and Grant Franchise (''Agreement'') with the City of Florence. The Agreement provides for the transfer of the Town's sewer and drinking water utilities to the City of Florence. Under the Consent Decree, the City of Florence will assume the obligations of the Defendant that are set forth in the Consent Decree. Specifically, the Consent Decree sets forth a schedule for bringing the utilities into compliance with both the Clean Water Act and the South Carolina Safe Drinking Water Act.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and the State of South Carolina by and through the Department of Health and Environmental Control (Plaintiffs)* v. *Town of Timmonsville (Defendant) and the City of Florence.* Case No. 4:13–CV–01522–RBH, D.J. Ref. No. 90–5–1–1–09597. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

| To submit comments: | Send them to: |
|---|---|
| By email ..... | *pubcomment-ees.enrd@usdoj.gov.* |
| By mail ..... | Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611. |

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $16.75 (25 cents per page reproduction cost) payable to the United States Treasury for the Consent Decree and $22.75 for the Consent Decree and Agreement.

**Henry S. Friedman,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 2013–22591 Filed 9–16–13; 8:45 am]

BILLING CODE 4410–15–P

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

On September 9, 2013, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the District of Connecticut in the lawsuit entitled *United States* v. *The Durham Manufacturing Company,* Civil Action No. 3:13-cv-01319.

The Consent Decree resolves claims of the United States pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9606 and 9607, against The Durham Manufacturing Company in connection with the Durham Meadows Superfund Site located in Durham, Connecticut (''Site''). Under the Consent Decree, the settling defendant agrees to pay $2.9 million to the United States in reimbursement of past response costs incurred by the United States with respect to the Site. In addition, the settling defendant agrees to perform certain response actions at the Site, estimated to cost approximately $1.1 million.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States of America* v. *The Durham Manufacturing Company.* D.J. Ref. No. 90–11–3–1721/3. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

| To submit comments: | Send them to: |
|---|---|
| By e-mail ..... | *pubcomment-ees.enrd@usdoj.gov.* |
| By mail ..... | Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611. |

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html*. We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $25.25 (25 cents per page reproduction cost) payable to the United States Treasury.

**Susan M. Akers,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 2013–22567 Filed 9–16–13; 8:45 am]

**BILLING CODE 4410–15–P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Proposed Consent Decree Under the Clean Water Act

On September 9, 2013, the Department of Justice lodged a proposed consent decree with the United States District Court for the District of South Carolina in the lawsuit entitled *United States and State of South Carolina* v. *City of Columbia,* Civil Action No. 3:13–2429–TLW.

The consent decree resolves allegations by the United States Environmental Protection Agency and the South Carolina Department of Health and Environmental Control against the City of Columbia (''Columbia''), in a complaint filed together with the consent decree, of violations of Sections 301 and 402 of the Clean Water Act, 33 U.S.C. 1311 and 1342, and Sections 48–1–50 and 48–1–90(A)(1) of the South Carolina Pollution Control Act, at Columbia's sanitary sewer system and wastewater treatment plant.

Under this settlement between the United States, the State, and Columbia, Columbia is required to implement programs for sewer management, operation and maintenance, including: a sewer overflow response plan, a contingency emergency response plan, a staff training program, an information management system, a capacity assurance program to address insufficient capacity areas during peak flow times, a sewer mapping program, a fats, oils, and grease management program, a transmission system operation and maintenance program, a gravity sewer system operation and maintenance program, and a financial analysis program to plan for sewer expenditures and upgrades.

Columbia will also complete several capital improvement projects already underway and will implement a comprehensive sewer assessment program to analyze its sanitary sewer system infrastructure and prioritize infrastructure projects. It will then undertake infrastructure rehabilitation, along with developing a hydraulic model of the system to plan for future needs.

The consent decree also provides for the payment of a civil penalty of $476,400, to be divided evenly between the United States and the State. Additionally, Columbia will spend $1.0 million on a Supplemental Environmental Project (''SEP'') to restore segments of three streams within the sewer system's service area: the lower reach of Rocky Branch; a segment of Smith Branch; and a segment of Gills Creek.

The publication of this notice opens a period for public comment on the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States v. City of Columbia,* D.J. Ref. No. 90–5–1–1–09954. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

| To submit comments: | Send them to: |
|---|---|
| By email ..... | *pubcomment-ees.enrd@usdoj.gov.* |
| By mail ..... | Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, D.C. 20044–7611 |

During the public comment period, the consent decree may be examined and downloaded at this Department of Justice 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 $26.00 (25 cents per page reproduction cost) for the consent decree alone or $56.25 for the consent decree and appendixes, payable to the U.S. Treasury.

**Henry Friedman,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 2013–22589 Filed 9–16–13; 8:45 am]

**BILLING CODE 4410–15–P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Importer of Controlled Substances; Notice of Application: Cerilliant Corporation

Pursuant to Title 21 Code of Federal Regulations 1301.34(a), this is notice that on July 16, 2013, Cerilliant Corporation, 811 Paloma Drive, Suite A, Round Rock, Texas 78665–2402, made application by renewal to the Drug Enforcement Administration (DEA) for registration as an importer of the following basic classes of controlled substances:

| Drug | Schedule |
|---|---|
| Cathinone (1235) ..... | I |
| Methcathinone (1237) ..... | I |
| Mephedrone (1248) ..... | I |
| N-Ethylamphetamine (1475) ..... | I |
| N,N-Dimethylamphetamine (1480) | I |
| Fenethylline (1503) ..... | I |
| Gamma Hydroxybutyric Acid (2010). | I |
| JWH-018 (7118) ..... | I |
| JWH-073 (7173) ..... | I |
| JWH-200 (7200) ..... | I |
| Alpha-ethyltryptamine (7249) ..... | I |
| Ibogaine (7260) ..... | I |
| CP-47497 (7297) ..... | I |
| CP-47497 C8 Homologue (7298) | I |
| Lysergic acid diethylamide (7315) | I |
| 2C-T-7 (7348) ..... | I |
| Marihuana (7360) ..... | I |
| Tetrahydrocannabinols (7370) ..... | I |
| Mescaline (7381) ..... | I |
| 3,4,5-Trimethoxyamphetamine (7390). | I |
| 4-Bromo-2,5-dimethoxyamphetamine (7391). | I |
| 4-Bromo-2,5-dimethoxyphenethylamine (7392). | I |
| 4-Methyl-2,5-dimethoxyamphetamine (7395). | I |
| 2,5-Dimethoxyamphetamine (7396). | I |
| 3,4-Methylenedioxyamphetamine (7400). | I |
| 3,4-Methylenedioxy-N-ethylamphetamine (7404). | I |
| 3,4-Methylenedioxymethamphetamine (7405). | I |
| 4-Methoxyamphetamine (7411) ... | I |
| 5-Methoxy-N-N-dimethyltryptamine (7431). | I |
| Alpha-methyltryptamine (7432) .... | I |
| Diethyltryptamine (7434) ..... | I |

| Drug | Schedule |
|---|---|
| Dimethyltryptamine (7435) | I |
| Psilocybin (7437) | I |
| Psilocyn (7438) | I |
| 5-Methoxy-N,N-diisopropyltryptamine (7439). | I |
| N-Benzylpiperazine (7493) | I |
| MDPV (7535) | I |
| Methylone (7540) | I |
| Desomorphine (9055) | I |
| Etorphine (except HCl) (9056) | I |
| Heroin (9200) | I |
| Morphine-N-oxide (9307) | I |
| Normorphine (9313) | I |
| Pholcodine (9314) | I |
| Dextromoramide (9613) | I |
| Dipipanone (9622) | I |
| Racemoramide (9645) | I |
| Trimeperidine (9646) | I |
| 1-Methyl-4-phenyl-4-propionoxypiperidine (9661). | I |
| Tilidine (9750) | I |
| Amphetamine (1100) | II |
| Methamphetamine (1105) | II |
| Methylphenidate (1724) | II |
| Amobarbital (2125) | II |
| Pentobarbital (2270) | II |
| Secobarbital (2315) | II |
| Phencyclidine (7471) | II |
| Phenylacetone (8501) | II |
| Cocaine (9041) | II |
| Codeine (9050) | II |
| Dihydrocodeine (9120) | II |
| Oxycodone (9143) | II |
| Hydromorphone (9150) | II |
| Ecgonine (9180) | II |
| Ethylmorphine (9190) | II |
| Meperidine (9230) | II |
| Methadone (9250) | II |
| Dextropropoxyphene, bulk (non-dosage forms) (9273). | II |
| Morphine (9300) | II |
| Oripavine (9330) | II |
| Thebaine (9333) | II |
| Levo-alphacetylmethadol (9648) | II |
| Oxymorphone (9652) | II |
| Poppy Straw Concentrate (9670) | II |
| Alfentanil (9737) | II |
| Sufentanil (9740) | II |
| Fentanyl (9801) | II |

The company plans to import small quantities of the listed controlled substances for the manufacture of analytical reference standards.

In reference to drug codes 7360 and 7370, the company plans to import a synthetic cannabidiol and a synthetic Tetrahydrocannabinol. No other activity for this drug code is authorized for this registration.

Comments and requests for hearing on applications to import narcotic raw material are not appropriate. 72 FR 3417 (2007).

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances listed in schedules I or II, which fall under the authority of section 1002(a)(2)(B) of the Act 21 U.S.C. 952 (a)(2)(B) may, in the circumstances set forth in 21 U.S.C. 958(i), file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than October 17, 2013.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, 40 FR 43745–46, all applicants for registration to import a basic class of any controlled substances in schedules I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: September 9, 2013.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 2013–22536 Filed 9–16–13; 8:45 am]

BILLING CODE 4410–09–P

## DEPARTMENT OF JUSTICE

### Office of Justice Programs

**[OJP (OJP) Docket No. 1631]**

### Meeting of the Office of Justice Programs' Science Advisory Board

**AGENCY:** Office of Justice Programs (OJP), Justice.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice announces a forthcoming meeting of OJP's Science Advisory Board (''Board''). The Board is chartered to provide OJP, a component of the Department of Justice, with valuable advice in the areas of science and statistics for the purpose of enhancing the overall impact and performance of its programs and activities in criminal and juvenile justice. To this end, the Board has designated six (6) subcommittees: National Institute of Justice (NIJ); Bureau of Justice Statistics (BJS); Office of Juvenile Justice and Delinquency Prevention (OJJDP); Bureau of Justice Assistance; Quality and Protection of Science; and Evidence Translation/Integration.

**DATES:** The meeting will take place on Friday, October 4, 2013, from 8:30 a.m. to 4:00 p.m., ET, with a break for lunch at approximately noon.

**ADDRESSES:** The meeting will take place in the Main Conference Room on the third floor of the Office of Justice Programs, 810 7th Street, Northwest, Washington, DC 20531.

**FOR FURTHER INFORMATION CONTACT:** Phelan Wyrick, Designated Federal Officer (''DFO''), Office of the Assistant Attorney General, Office of Justice Programs, 810 7th Street Northwest, Washington, DC 20531; Phone: (202) 353–9254 [Note: this is not a toll-free number]; Email: *phelan.wyric@usdoj.gov*.

**SUPPLEMENTARY INFORMATION:** This meeting is being convened to brief the OJP Assistant Attorney General and the Board members on the progress of the subcommittees, discuss any recommendations they may have for consideration by the full Board, and brief the Board on various OJP-related projects and activities. The final agenda is subject to adjustment, but it is anticipated that there will be a morning session and an afternoon session, with a break for lunch. These sessions will likely include briefings of the subcommittees' activities and discussion of future Board actions and priorities.

This meeting is open to the public. Members of the public who wish to attend this meeting must register with Phelan Wyrick at the above address at least seven (7) days in advance of the meeting. Registrations will be accepted on a space available basis. Access to the meeting will not be allowed without registration. Persons interested in communicating with the Board should submit their written comments to the DFO, as the time available will not allow the public to directly address the Board at the meeting. Anyone requiring special accommodations should notify Mr. Wyrick at least seven (7) days in advance of the meeting.

**Phelan Wyrick,**

*Science Policy Advisor and Science Advisory Board DFO, Office of the Assistant Attorney General, Office of Justice Programs.*

[FR Doc. 2013–22628 Filed 9–16–13; 8:45 am]

BILLING CODE 4410–18–P

## DEPARTMENT OF JUSTICE

### Office of Justice Programs

**[OJP (BJA) Docket No. 1633]**

### Meeting of the Global Justice Information Sharing Initiative Federal Advisory Committee

**AGENCY:** Office of Justice Programs (OJP), Justice.

**ACTION:** Notice of meeting.

**SUMMARY:** This is an announcement of a meeting of the Global Justice Information Sharing Initiative (Global) Federal Advisory Committee (GAC) to discuss the Global Initiative, as described at *www.it.ojp.gov/global*.

**DATES:** The meeting will take place on Wednesday, October 30, 2013, from 8:30 a.m. to 4:00 p.m. ET.

**ADDRESSES:** The meeting will take place at the Hilton Crystal City at Washington Reagan National Airport, 2399 Jefferson Davis Highway, Arlington VA 22202, Phone: (703) 418–6800.

**FOR FURTHER INFORMATION CONTACT:** J. Patrick McCreary, Global Designated Federal Employee (DFE), Bureau of Justice Assistance, Office of Justice Programs, 810 7th Street, Washington, DC 20531; Phone: (202) 616–0532 [note: this is not a toll-free number]; Email: *James.P.McCreary@usdoj.gov*.

**SUPPLEMENTARY INFORMATION:** This meeting is open to the public. Due to security measures, however, members of the public who wish to attend this meeting must register with Mr. McCreary at the above address at least (7) days in advance of the meeting. Registrations will be accepted on a space available basis. Access to the meeting will not be allowed without registration. All attendees will be required to sign in at the meeting registration desk. Please bring photo identification and allow extra time prior to the meeting.

Anyone requiring special accommodations should notify Mr. McCreary at least seven (7) days in advance of the meeting.

#### Purpose

The GAC will act as the focal point for justice information systems integration activities in order to facilitate the coordination of technical, funding, and legislative strategies in support of the Administration's justice priorities.

The GAC will guide and monitor the development of the Global information sharing concept. It will advise the Assistant Attorney General, OJP; the Attorney General; the President (through the Attorney General); and local, state, tribal, and federal policymakers in the executive, legislative, and judicial branches. The GAC will also advocate for strategies for accomplishing a Global information sharing capability.

Interested persons whose registrations have been accepted may be permitted to participate in the discussions at the discretion of the meeting chairman and with approval of the DFE.

**J. Patrick McCreary,**

*Global DFE, Bureau of Justice Assistance, Office of Justice Programs.*

[FR Doc. 2013–22604 Filed 9–16–13; 8:45 am]

**BILLING CODE 4410–18–P**

## LEGAL SERVICES CORPORATION

### Sunshine Act Meeting; Notice

**DATE AND TIME:** The Legal Services Corporation's Promotion and Provision for the Delivery of Legal Services Committee will meet telephonically on September 20, 2013. The meeting will commence at 2:30 p.m., EDT, and will continue until the conclusion of the Committee's agenda.

**LOCATION:** John N. Erlenborn Conference Room, Legal Services Corporation Headquarters, 3333 K Street NW., Washington, DC 20007.

**PUBLIC OBSERVATION:** Members of the public who are unable to attend in person but wish to listen to the public proceedings may do so by following the telephone call-in directions provided below.

**CALL-IN DIRECTIONS FOR OPEN SESSIONS:**

- Call toll-free number: 1–866–451–4981;
- When prompted, enter the following numeric pass code: 5907707348
- When connected to the call, please immediately ''MUTE'' your telephone.

Members of the public are asked to keep their telephones muted to eliminate background noises. To avoid disrupting the meeting, please refrain from placing the call on hold if doing so will trigger recorded music or other sound. From time to time, the Chair may solicit comments from the public.

**STATUS OF MEETING:** Open.

**MATTERS TO BE CONSIDERED:**

1. Approval of agenda
2. Approval of minutes of the Committee's meeting of July 22, 2013
3. Consider and act on proposed revisions to the Committee's charter
4. Consider and act on other business
5. Consider and act on adjournment of meeting.

**CONTACT PERSON FOR INFORMATION:** Katherine Ward, Executive Assistant to the Vice President & General Counsel, at (202) 295–1500. Questions may be sent by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov.*

**ACCESSIBILITY:** LSC complies with the Americans with Disabilities Act and Section 504 of the 1973 Rehabilitation Act. Upon request, meeting notices and materials will be made available in alternative formats to accommodate individuals with disabilities. Individuals who need other accommodations due to disability in order to attend the meeting in person or telephonically should contact Katherine Ward, at (202) 295–1500 or *FR_NOTICE_QUESTIONS@lsc.gov,* at least 2 business days in advance of the meeting. If a request is made without advance notice, LSC will make every effort to accommodate the request but cannot guarantee that all requests can be fulfilled.

Dated: September 13, 2013.

**Atitaya C. Rok,**

*Staff Attorney.*

[FR Doc. 2013–22666 Filed 9–13–13; 11:15 am]

**BILLING CODE 7050–01–P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice 13–115]**

### NASA Applied Sciences Advisory Committee Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Applied Sciences Advisory Committee. The meeting will be held for the purpose of soliciting, from the scientific community and other persons, scientific and technical information relevant to program planning.

**DATES:** Tuesday October 8, 2013, 8:30 a.m. to 5:00 p.m., and Wednesday, October 9, 2013, 8:30 a.m. to 3:00 p.m., Local Time.

**ADDRESSES:** NASA Headquarters, Room 1Q39, 300 E Street SW., Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Mr. Peter Meister, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–1557, fax (202) 358–4118, or *peter.g.meister@nasa.gov*.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—Applied Sciences Program Update
—Data Latency Study Interim Results
—Capacity Building Assessment Report and Discussion

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide a copy of their passport, visa, or green card in addition to providing the following information no less than 10 working days prior to the meeting: Full name; gender; date/place of birth; citizenship; visa/green card information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee. To expedite admittance, attendees with U.S. citizenship and Permanent Residents (green card holders) can provide identifying information 3 working days in advance by contacting Peter Meister via email at *peter.g.meister@nasa.gov* or by telephone at (202) 358–1557.

**Patricia D. Rausch,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 2013–22594 Filed 9–16–13; 8:45 am]

**BILLING CODE 7510–13–P**

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

**[NARA–2013–044]**

## Records Schedules; Availability and Request for Comments

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Notice of availability of proposed records schedules; request for comments.

**SUMMARY:** The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

**DATES:** Requests for copies must be received in writing on or before October 17, 2013. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

**ADDRESSES:** You may request a copy of any records schedule identified in this notice by contacting Records Management Services (ACNR) using one of the following means:

*Mail:* NARA (ACNR), 8601 Adelphi Road, College Park, MD 20740–6001.

*Email: request.schedule@nara.gov.*

*FAX:* 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

**FOR FURTHER INFORMATION CONTACT:** Margaret Hawkins, Director, Records Management Services (ACNR), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–1799. Email: *request.schedule@nara.gov.*

**SUPPLEMENTARY INFORMATION:** Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless specified otherwise. An item in a schedule is media neutral when the disposition instructions may be applied to records regardless of the medium in which the records are created and maintained. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is limited to a specific medium. (See 36 CFR 1225.12(e).)

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

### Schedules Pending

1. Department of Defense, Army and Air Force Exchange Service (DAA–0334–2013–0001, 1 item, 1 temporary item). Records relating to the disposal of lost or unclaimed property found on agency premises.

2. Department of Defense, Army and Air Force Exchange Service (DAA–0334–2013–0002, 1 item, 1 temporary item). Records relating to merchandise exchanges.

3. Department of Defense, Army and Air Force Exchange Service (DAA–

0334–2013–0003, 1 item, 1 temporary item). Records relating to merchandise refunds.

4. Department of Defense, Defense Security Service (DAA–0446–2013–0001, 13 items, 13 temporary items). Records relating to security training including instructor syllabuses, student summaries, and course reference materials.

5. Department of Health and Human Services, Centers for Medicare & Medicaid Services (DAA–0440–2013–0010, 1 item, 1 temporary item). Master files of an electronic information system used to assess customer service of state-run health insurance assistance programs.

6. Department of Homeland Security, U.S. Coast Guard (DAA–0026–2013–0009, 4 items, 4 temporary items). Records of printing services.

7. Department of Labor, Bureau of Labor Statistics (DAA–0257–2013–0002, 1 item, 1 temporary item). Employee non-disclosure agreements.

8. Department of the Navy, U.S. Marine Corps (DAA–0127–2013–0008, 1 item, 1 temporary item). Master files of an electronic information system used to manage procurement, tracking, and distribution of publications.

9. Department of the Navy, U.S. Marine Corps (DAA–0127–2013–0010, 1 item, 1 temporary item). Master files of an electronic information system used to collect data for security and background investigations.

10. Department of State, Foreign Service Grievance Board (DAA–0059–2013–0002, 9 items, 7 temporary items). Included are records of proceedings, decisions, member files, and administrative records. Proposed for permanent retention are annual reports and formal minutes.

11. Department of Transportation, Federal Highway Administration (DAA–0406–2013–0003, 1 item, 1 temporary item). Master files of an electronic information system used to track the costs of highway construction.

12. Office of the Director of National Intelligence, Office of the Deputy Director of National Intelligence for Intelligence Integration (N1–576–11–12), 13 items, 6 temporary items. Records of the President's Daily Brief including electronic backups, reference materials, copies of service level agreements, and non-substantive drafts and working papers. Proposed for permanent retention are case files associated with the production and delivery of the brief, policy records, calendars, and substantive working papers.

Dated: September 10, 2013.

**Paul M. Wester, Jr.,**

*Chief Records Officer for the U.S. Government.*

[FR Doc. 2013–22544 Filed 9–16–13; 8:45 am]

**BILLING CODE 7515–01–P**

## NATIONAL SCIENCE FOUNDATION

### Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

**AGENCY:** National Science Foundation.

**ACTION:** Notice of Permit Applications Received under the Antarctic Conservation Act of 1978, Public Law 95–541.

**SUMMARY:** The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

**DATES:** Interested parties are invited to submit written data, comments, or views with respect to this permit application by October 17, 2013. This application may be inspected by interested parties at the Permit Office, address below.

**ADDRESSES:** Comments should be addressed to Permit Office, Room 755, Division of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

**FOR FURTHER INFORMATION CONTACT:** Adrian Dahood, ACA Permit Officer, at the above address or *ACApermits@nsf.gov* or (703) 292–7149.

**SUPPLEMENTARY INFORMATION:** The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

### Application Details

1. *Applicant:* Ted Cheeseman, Permit Application: 2014–018, Cheeseman's Ecology Safaris, Santa Cruz, CA

*Activity for Which Permit Is Requested*

Take (Salvage); The applicant requests a permit to collect feathers and small tissue samples from up to 20 Emperor penguin carcasses on Snow Hill Island. The applicant is working in collaboration with a UK scientist who will receive and analyze the samples to better understand emperor penguin population structure, migration and demographic processes. Only carcasses that are a sufficient distance away from the colony would be selected for sampling. This would ensure that no live animals are disturbed during sampling.

*Location*

Snow Hill Island Emperor Penguin Colony.

*Dates*

October 14, 2013 to October 31, 2013.

**Nadene G. Kennedy,**

*Polar Coordination Specialist, Division of Polar Programs.*

[FR Doc. 2013–22568 Filed 9–16–13; 8:45 am]

**BILLING CODE 7555–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2013–0209]**

### Biweekly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

### Background

Pursuant to Section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from August 22, 2013, to September 4, 2013. The last biweekly notice was published on September 3, 2013 (78 FR 54280).

**ADDRESSES:** You may submit comments by any of the following methods (unless

this document describes a different method for submitting comments on a specific subject):

• *Federal rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0209. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.*

• *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: 3WFN–06–A44MP, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

**SUPPLEMENTARY INFORMATION:**

## I. Accessing Information and Submitting Comments

### *A. Accessing Information*

Please refer to Docket ID NRC–2013–0209 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, by the following methods:

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0209.

• *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.* Documents may be viewed in ADAMS by performing a search on the document date and docket number.

• *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.

### *B. Submitting Comments*

Please include Docket ID NRC–2013–0209 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS, and the NRC does not edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information in their comment submissions that they do not want to be publicly disclosed. Your request should state that the NRC will not edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

## Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in § 50.92 of Title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license or combined license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. NRC regulations are accessible electronically from the NRC Library on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

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 should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: 1) the name, address, and telephone number of the requestor or petitioner; 2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; 3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and 4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The

petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

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.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital information (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the 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 Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC 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 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 Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email at *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 the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, a request to intervene will require including information on local residence in order to demonstrate a proximity assertion of interest in the proceeding. 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.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the following three factors in 10 CFR 2.309(c)(1): (i) the information upon which the filing is based was not previously available; (ii) the information upon which the filing is based is materially different from information previously available; and (iii) the filing has been submitted in a timely fashion based on the availability of the subsequent information.

For further details with respect to this license amendment application, see the application for amendment which is available for public inspection at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.*

*South Carolina Electric and Gas, Docket Nos. 52–027 and 52–028, Virgil C. Summer Nuclear Station (VCSNS) Units 2 and 3, Fairfield County, South Carolina*

*Date of amendment request:* August 30, 2013.

*Description of amendment request:* The proposed change would amend Combined License Nos. NPF–93 and NPF–94 for the Virgil C. Summer Nuclear Station (VCSNS) Units 2 and 3 by departing from the Combined License Appendix C information and the plant-specific Design Control Document (DCD) Tier 2 material by revising the safety function and classification of Liquid Radwaste System (WLS) drain hubs in the Chemical and Volume Control System and Passive Core Cooling System (PXS) compartments. In addition, the proposed changes would modify the PXS compartment drain piping connection; WLS valve types, and depiction of components in the WLS figures.

Because this proposed change requires a departure from Tier 1 information in the Westinghouse Advanced Passive 1000 DCD, the licensee also requested an exemption from the requirements of the Generic DCD Tier 1 in accordance with 52.63(b)(1).

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

The design function of the WLS is containment isolation and the prevention of backflow in the drain lines from the CVS compartment and the PXS compartment to the containment sump which prevents cross flooding of these compartments. The proposed changes to the WLS drainage function; the CVS and PXS compartment drain hubs; and the WLS valve types do not affect these design functions or any other system design function. Revising the drain hub safety classification, the PXS drains connection type, and the WLS valve types do not involve any accident initiating event or component failure. The changes to how components (valves, filters) are depicted in the figure provide consistency with the figure legend and do not alter any system functions. The system will utilize the same codes and standards previously used for the system. Since there are no impacts on accident initiating events or component failures, the probability of an accident previously evaluated is not affected. The radioactive material source terms and release paths used in the safety analyses are unchanged, thus the radiological releases in the Updated Final Safety Analysis Report (UFSAR) accident analyses are not affected.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No

The proposed changes to the WLS system do not adversely affect the design or quality of any structure, system or component. Revising the WLS safety functions and re-classifying the drain hubs as nonsafety-related does not create a new fault or sequence of events that could result in a radioactive material release nor do the changes to the WLS piping connections, valve types and the depiction of components on the figure have any impact on any accident previously evaluated.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No

The proposed changes to the WLS system drain hubs, piping connection, valve type, and Tier 1 figure depiction would not affect any radioactive material barrier. No safety analysis or design basis acceptance limit/criterion is challenged or exceeded by the proposed change, thus no margin of safety is reduced.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Ms. Kathryn M. Sutton, Morgan, Lewis & Bockius LLC, 1111 Pennsylvania Avenue NW., Washington, DC 20004–2514.

*NRC Branch Chief:* Lawrence Burkhart.

*Southern Nuclear Operating Company, Inc., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia*

*Date of amendment request:* August 20, 2013.

*Description of amendment request:* The proposed amendments would revise the Vogtle Electric Generating (VEGP) Emergency Plan by revising the Emergency Action Level (EAL) thresholds for certain Initiating Conditions. The proposed change will remove certain Main Steam Line (MSL) radiation monitors from the reference initiating conditions to address limitations of these monitors.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

The proposed change to the emergency plan does not impact the physical function of plant structures, systems, or components (SSCs) or the manner in which SSCs perform their design function. The proposed changes neither adversely affect accident initiators or precursors, nor alter design assumptions.

The proposed changes do not alter or prevent the ability of operable SSCs to perform their intended function to mitigate the consequences of an initiating event within assumed acceptance limits. No operating procedures or administrative controls that function to prevent or mitigate accidents are affected by the proposed change.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not impact the accident analysis. The changes do not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed), a change in the method of plant operation, or new operator actions. The proposed change will not introduce failure modes that could result in a new accident, and the change does not alter assumptions made in the safety analysis. The proposed changes revise EALs, which establish the thresholds for placing the plant in an emergency classification. EALs are not initiators of any accidents.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Margin of safety is associated with confidence in the ability of the fission product barriers (i.e., fuel cladding, reactor coolant system pressure boundary, and containment structure) to limit the level of radiation dose to the public. The proposed changes are associated with the EALs and do not impact operation of the plant or its response to transients or accidents. The changes do not affect the TSs or the operating license. The proposed changes do not involve a change in the method of plant operation, and no accident analyses will be affected by the proposed changes. Additionally, the proposed changes will not relax any criteria used to establish safety limits and will not relax any safety system settings. The safety analysis acceptance criteria are not affected by these changes. The proposed changes will not result in plant operation in a configuration outside the design basis. The proposed change does not adversely affect systems that respond to safely shutdown the plant and to maintain the plant in a safe shutdown condition.

The revised EAL provides more appropriate and accurate criteria for determining protective measures that should be considered within and outside the site boundary to protect health and safety. The emergency plan will continue to activate an emergency response commensurate with the extent of degradation of plant safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on the above, SNC has determined that operation of the facility in accordance with the proposed changes does not involve a significant hazards consideration as defined in 10 CFR 50.92(c), in that it does not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Leigh D. Perry, SVP & General Counsel, Southern Nuclear Operating Company, 40 Inverness Center Parkway, Birmingham, AL 35242.

*NRC Branch Chief:* Robert Pascarelli.

## Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

*Tennessee Valley Authority, Docket No. 50–259, Browns Ferry Nuclear Plant, Unit 1, Limestone County, Alabama*

*Date of application for amendments:* August 14, 2013.

*Description of amendments request:* The proposed amendment would delete the Notes that cover the Reactor Coolant System (RCS) Pressure and Temperature Limits curves on Technical Specification 3.4.9, ''RCS Pressure and Temperature (P/T) Limits,'' Figures 3.4.9–1 and 3.4.9–2 that are applicable from 12 Effective Full Power Years (EFPY) to 16 EFPY and allows the usage of the figures up to 16 EFPY. The current notes state, ''Do Not Use This Figure. This curve applies to operations > 12 EFPY. For current operation, use previous curve, which is valid up to 12 EFPY.''

*Date of publication of individual notice in the* ***Federal Register:*** August 23, 2013 (78 FR 52571).

*Expiration date of individual notice:* September 6, 2013 (Public comments) and October 22, 2013 (Hearing requests).

## Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of 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.

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** as indicated.

Unless otherwise indicated, 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. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through the Agencywide Documents Access and Management System (ADAMS) in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR's Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr.resource@nrc.gov.*

*Carolina Power and Light Company, et al., Docket No. 50–261, H.B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina*

*Date of application for amendment:* August 29, 2012, as supplemented by letters dated March 6, 2013, April 9, 2013, and August 22, 2013.

*Brief description of amendment:* The license amendment combined two changes that affected the same Technical Specification (TS) sections. The first part implemented revisions consistent with TS Task Force—510, Revision 2, ''Revision to Steam Generator (SG) Program Inspection Frequencies and Tube Sample Selection.'' The second part revised TS 5.5.9 ''Steam Generator Program'' to exclude portions of the SG tube below the top of the SG tubesheet form periodic inspections by implementing the permanent alternate criteria ''H*''.

*Date of issuance:* August 29, 2013.

*Effective date:* This license amendment is effective as of the date of its issuance and shall be implemented within 30 days.

*Amendment No.:* 235.

*Renewed Facility Operating License No. DPR–23:* Amendment changed the license and TSs.

*Date of initial notice in **Federal Register:*** October 16, 2012, 2012 (77 FR 63348). The supplements dated March 6, 2013, April 9, 2013, and August 22, 2013, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 29, 2013.

*No significant hazards consideration comments received:* No.

*Duke Energy Carolinas, LLC, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina*

*Date of application of amendments:* October 30, 2012, as supplemented by letters dated July 16 and July 26, 2013.

*Brief description of amendments:* The amendments revised the Technical Specifications related to limits on outage times for the Keowee Hydro Units, which are the onsite electrical power supply for the Oconee Nuclear Station.

*Date of Issuance:* August 23, 2013.

*Effective date:* As of the date of issuance and shall be implemented within 30 days from the date of issuance.

*Amendment Nos.:* 382, 384, and 383.

*Renewed Facility Operating License Nos. DPR–38, DPR–47, and DPR–55:* Amendments revised the licenses and the technical specifications.

*Date of initial notice in **Federal Register:*** February 19, 2013, 78 FR 11691. The supplements dated July 16 and July 26, 2013, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 23, 2013.

*No significant hazards consideration comments received:* No.

*Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant Unit Nos. 1 and 2, St. Lucie County, Florida*

*Date of application for amendment:* December 27, 2012.

*Brief description of amendment:* The amendments revised the Technical Specifications (TSs) to align with Combustion Engineering Owners Group TS language describing required licensed Senior Reactor Operator duties during fuel-handling activities.

*Date of issuance:* August 30, 2013.

*Effective date:* As of the date of issuance and shall be implemented within 90 days.

*Amendment Nos.:* 216 and 166.

*Facility Operating License Nos. DPR–77 and DPR–79:* Amendments revised the License and TS.

*Date of initial notice in **Federal Register:*** March 19, 2013 (78 FR 16884).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 30, 2013.

*No significant hazards consideration comments received:* No.

*Northern States Power Company—Minnesota (NSPM), Docket No. 50–263, Monticello Nuclear Generating Plant (MNGP), Wright County, Minnesota*

*Date of application for amendment:* August 21, 2012, as supplemented on November 7, 2012, and March 22, 2013.

*Brief description of amendment:* The amendment revises the MNGP Renewed Facility Operating Licensing and Technical Specifications to (1) correct typographical errors; (2) remove obsolete information; (3) remove outdated references to a letter that, in part, specified spent fuel pool storage capability; (4) make editorial changes; and (5) correct a pagination error from a previously-issued license amendment.

*Date of issuance:* August 28, 2013.

*Effective date:* As of the date of issuance and shall be implemented within 90 days from the date of issuance.

*Amendment No.:* 175.

*Renewed Facility Operating License No. DPR–22:* Amendment revises the Renewed Facility Operating License and Technical Specifications.

*Date of initial notice in **Federal Register:*** December 26, 2012 (77 FR 76081). The supplements dated November 7, 2012, and March 22, 2013, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 28, 2013.

*No significant hazards consideration comments received:* No.

*Northern States Power Company—Minnesota, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota*

*Date of application for amendments:* August 19, 2011, supplemented by letters dated May 16, 2012, September 4, 2012, February 8, 2013, and July 17, 2013.

*Brief description of amendments:* The amendments revised TS 3.7.17, ''Spent Fuel Pool Storage,'' and TS 4.3.1, ''Fuel Storage Criticality'' to provide new spent fuel pool (SFP) loading restrictions that meet subcriticality for all postulated conditions. The TS changes will correct non-conservatisms in the SFP criticality analysis-of-record.

*Date of issuance:* August 29, 2013.

*Effective date:* As of the date of issuance and shall be implemented within 120 days.

*Amendment Nos.:* Unit 1—209; Unit 2—196.

*Renewed Facility Operating License Nos. DPR–42 and DPR–60:* Amendments revised the Facility Operating Licenses and Technical Specifications.

*Date of initial notice in **Federal Register:*** February 14, 2012 (77 FR 8291). The supplemental letters dated May 16, 2012, September 4, 2012, February 8, 2013, and July 17, 2013, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 29, 2013.

*No significant hazards consideration comments received:* No.

*Tennessee Valley Authority, Docket Nos. 50–259, 50–260, and 50–296, Browns Ferry Nuclear Plant (BFN), Units 1, 2, and 3, Limestone County, Alabama*

*Date of application for amendments:* August 28, 2012, as supplemented by letter dated August 29, 2013.

*Description of amendment request:* The amendments deleted references to the American Society of Mechanical Engineers (ASME) Code, Section XI, and added references to the ASME Code for Operation and Maintenance of Nuclear Power Plants to Section 5.5.6, ''Inservice Testing Program,'' to the Technical Specifications. The amendment also allows a 25-percent extension of surveillance interval using the Surveillance Requirement 3.0.2 provisions to other normal and accelerated frequencies specified as two years or less in the Inservice Test Program.

*Date of issuance:* August 30, 2013.

*Effective date:* Date of issuance, to be implemented within 60 days.

*Amendment Nos.:* Unit 1—283, Unit 2—310, and Unit 3—269.

*Renewed Facility Operating License Nos. DPR–33, DPR–52, and DPR–68:* Amendments revised the licenses and Technical Specifications.

*Date of initial notice in **Federal Register:*** November 27, 2012 (77 FR 70844). The supplement dated August 29, 2013, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 30, 2013.

*No significant hazards consideration comments received:* No.

*Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas*

*Date of amendment request:* October 18, 2012, as supplemented by letter dated March 20, 2013.

*Brief description of amendment:* The amendment revised paragraph 2.C(5)(a) of the renewed facility operating license and the fire protection program as described in the Updated Safety Analysis Report (USAR) to allow a deviation from the separation requirements of 10 CFR Part 50, Appendix R, Section III.G.2, as documented in Appendix 9.5E of the Wolf Creek Generating Station USAR, for the volume control tank outlet valves.

*Date of issuance:* August 23, 2013.

*Effective date:* As of its date of issuance and shall be implemented within 90 days of the date of issuance.

*Amendment No.:* 205.

*Renewed Facility Operating License No. NPF–42.* The amendment revised the Operating License.

*Date of initial notice in **Federal Register:*** December 11, 2012 (77 FR 73692). The supplemental letter dated March 20, 2013, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 23, 2013.

*No significant hazards consideration comments received:* No.

Dated at Rockville, Maryland, this 6th day of September 2013.

For the Nuclear Regulatory Commission.

**Michele G. Evans,**

*Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. 2013–22469 Filed 9–16–13; 8:45 am]

**BILLING CODE 7590–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–70372; File No. SR–NYSEARCA–2013–88]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Certain Rules Pertaining to the Trading of Options in Order To Change the Expiration Date for Most Option Contracts to the Third Friday of the Expiration Month Instead of the Saturday Following the Third Friday

September 11, 2013.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on September 5, 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 amend certain of its rules pertaining to the trading of options in order to change the expiration date for most option contracts to the third Friday of the expiration month instead of the Saturday following the third Friday. The text of the proposed rule change is available on the Exchange's Web site at

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

*www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend certain of its rules pertaining to the trading of options in order to change the expiration date for most option contracts to the third Friday of the expiration month instead of the Saturday following the third Friday. This proposed rule change is based on a recent proposal of The Options Clearing Corporation (''OCC'') and is designed to conform the Exchange's rules to the changes implemented by the OCC.[4] As discussed in greater detail below, during a transition period that began on June 21, 2013, expiration processing will be conducted on Friday, although supplementary exercises could still be submitted prior to the Saturday expiration time. Saturday expirations will be eliminated for all option contracts expiring on or after February 1, 2015, with a limited exception for certain ''grandfathered'' contracts.

Most option contracts (''monthly expiration contracts'') currently expire at the ''expiration time'' (11:59 p.m. Eastern Time (''ET'')) on the Saturday following the third Friday of the specified expiration month (the ''expiration date'').[5] As a result of this proposed rule change, the expiration date for monthly expiration contracts would be changed to the third Friday of the expiration month. The expiration time would continue to be 11:59 p.m. ET on the expiration date. The proposed rule change would apply only to monthly expiration contracts expiring after February 1, 2015, and, in this regard, the Exchange does not propose to change the expiration date for any outstanding option contract.

The proposed rule change would apply only to series of option contracts opened for trading after the effective date of this proposed rule change and having expiration dates later than February 1, 2015. Option contracts having non-monthly expiration dates (''non-monthly expiration contracts'') would be unaffected by this proposed rule change except that flexibly structured (''FLEX'') options having expiration dates later than February 1, 2015 could not expire on a Saturday unless they are specified by the OCC as grandfathered. Non-monthly expiration contracts are discussed further below.

In order to provide a smooth transition to the proposed Friday expiration, the Exchange, together with other option exchanges and the OCC, began moving the expiration exercise procedures to Friday for all monthly expiration contracts on June 21, 2013, even though the contracts will continue to expire on Saturday. After February 1, 2015, virtually all monthly expiration contracts would actually expire on Friday. The only monthly expiration contracts that would expire on a Saturday after February 1, 2015 would be certain options that were listed prior to the effectiveness of the OCC's proposal, and a limited number of options that may be listed prior to necessary systems changes of the Exchange and the other options exchanges, which are expected to be completed in August 2013. The Exchange, along with other option exchanges, has agreed that, once these systems changes are made, it will not list any additional options with Saturday expiration dates falling after February 1, 2015.

Background

Saturday was established as the monthly expiration date for OCC-cleared options primarily in order to allow sufficient time for processing of option exercises, including correction of errors, while the markets were closed and positions remained fixed. However, improvements in technology and long experience have rendered Saturday expiration processing inefficient. Indeed, many non-monthly expiration contracts are currently traded with business day expiration dates. These include FLEX options and quarterly, monthly, and weekly options. Expiration exercise processing for these non-monthly expiration contracts occurs on a more compressed timeframe and with somewhat different procedures than Saturday expiration processing for monthly expiration contracts.

It has been a long-term goal of OCC and its clearing members to move the expiration process for all monthly expiration contracts from Saturday to Friday night. Eliminating Saturday expirations will allow OCC to streamline the expiration process for all monthly expiration contracts and increase operational efficiencies for OCC and its clearing members. Furthermore, it will compress the operational timeframe for processing the options expirations such that clearing members will be required to reconcile options trades on the trade date, which will enhance intra-day risk management of cleared trades by the clearing member and promote real-time trade date reconciliation and position balancing by clearing members.

Industry groups, clearing members and the option exchanges have been active participants in planning for the transition to the Friday expiration. In March 2012, OCC began to discuss moving monthly expiration contracts to Friday expiration dates with industry groups, including two Securities Industry and Financial Markets Association (''SIFMA'') committees, the Operations and Technology Steering Committee and the Options Committee, and at two major industry conferences, the SIFMA Operations Conference and the Options Industry Conference. OCC also discussed the project with the Intermarket Surveillance Group and at an OCC Operations Roundtable. In each case, the initiative received broad support.

Friday expiration processing is also consistent with the long-standing rules and procedures of the options exchanges and the Financial Industry Regulatory Authority (''FINRA''), which generally provide that exercise decisions with respect to expiring monthly expiration contracts must be made by, and exercise instructions may not be accepted from customers after, 5:30 p.m. ET on the business day preceding expiration (usually Friday).[6] Brokerage firms may set earlier cutoff times for customers submitting exercise notices. Clearing members of OCC are permitted to submit exercise instructions after the cutoff time (''supplementary exercises'') only in

[4] *See* Securities Exchange Act Release No. 69772 (June 17, 2013), 78 FR 37645 (June 21, 2013) (SR–OCC–2013–04).

[5] *See, e.g.,* the definition of ''expiration time'' in Article I of the OCC By-Laws.

[6] *See, e.g.,* FINRA Rule 2360(b)(23)(A)(iii), which provides that ''[o]ption holders have until 5:30 p.m. Eastern Time ('ET') on the business day immediately prior to the expiration date to make a final exercise decision to exercise or not exercise an expiring option. Members may not accept exercise instructions for customer or noncustomer accounts after 5:30 p.m. ET.''

case of errors or other unusual situations, and may be subject to fines or disciplinary actions.[7] The Exchange believes that the extended period between cutoff time and expiration of options is no longer necessary given modern technology.

Transition Period

Based on significant dialogue between the Exchange, other option exchanges, the OCC and its clearing members regarding the move to Friday expiration, the Exchange believes that the adoption of Friday expiration for monthly expiration contracts is best accomplished through an appropriate transition period, during which processing activity for all options, whether expiring on Friday or Saturday, has moved to Friday, followed by a change in the expiration day for new series of options. In May 2012, it was determined that Friday, June 21, 2013, would be an appropriate date on which to move expiration processing from Saturday to Friday night.

Accordingly, and based on the OCC's related proposal, beginning June 21, 2013, Friday expiration processing is in effect for all expiring monthly expiration contracts, regardless of whether the contract's actual expiration date is Friday or Saturday. However, for contracts having a Saturday expiration date, exercise requests received after Friday expiration processing is complete, but before the Saturday contract expiration time, will continue to be processed, without fines or penalties, so long as they are submitted in accordance with OCC's procedures governing such requests. After the transition period and the expiration of all existing Saturday-expiring options, expiration processing would be a single operational process and would run on Friday night for all monthly expiration contracts.

Friday Expiration Processing Schedule

Previously, expiration processing for monthly expiration contracts began on Saturday morning at 6:00 a.m. Central Time (''CT'') and was completed at approximately noon CT when margin and settlement reports are available. The window for submission of instructions in accordance with OCC's exercise-by-exception procedures under OCC Rule 805(d) was open from 6:00 a.m. to 9:00 a.m. CT on Saturday morning.[8] As proposed by OCC, the window for submission of exercise-by-exception instructions is now open from 6:00 p.m. to 9:15 p.m. CT on Friday evening.[9] Friday expiration processing for monthly expiration contracts therefore now begins at 6:00 p.m. CT on Friday evening and ends at approximately 2:00 a.m. CT on Saturday morning when margin and settlement reports would be availble.[10]

Exercises for monthly expiration contracts with Saturday expirations must be allowed under the terms of the contracts. However, in order to accommodate the proposed new expiration schedule, the OCC also proposed to shorten the period of time in which clearing members may submit a supplementary exercise notice under OCC Rule 805(b). In addition, OCC amended Rule 801 to eliminate the ability of clearing members to revoke or modify exercise notices submitted to OCC. This change, along with the change in the processing timeline discussed above, more closely aligns OCC's expiration processing procedures with self-regulatory organization rules, including those of the Exchange, under which exchange members must submit exercise instructions by 5:30 p.m. ET on Friday and may not accept exercise instructions from customers after 5:30 p.m. ET on Friday. Accordingly, this change does not represent a departure from current practices for clearing members or their customers.

Grandfathering of Certain Options Series

Certain option contracts have already been listed on participant exchanges, including the Exchange, with Saturday expiration dates as distant as December 2016. Additionally, until participant exchanges, including the Exchange, complete certain systems enhancements in August 2013, it is possible that additional option contracts may be listed with Saturday expiration dates beyond February 1, 2015. For these contracts, transitioning to a Friday expiration for newly-listed option contracts expiring after February 1, 2015 would create a situation under which certain option open interest would expire on a Saturday while other option open interest would expire on a Friday in the same expiration month. OCC clearing members have expressed a clear preference to not have a mix of option open interest in any particular month. Accordingly, the Exchange and other option exchanges have agreed not to permit the listing of, and OCC will not accept for clearance, any new option contracts with a Friday expiration if existing option contracts of the same series expire on the Saturday following the third Friday of the same month. However, Friday expiration processing will be in effect for these Saturday expiration contracts. As with monthly expiration contracts during the transition period, exercise requests received after Friday expiration processing is complete, but before the Saturday contract expiration time, will continue to be processed without fines or penalties.

Proposed Amendments to the Exchange's Rules

In order to implement the change to Friday expiration processing and eventual transition to Friday expiration for all monthly expiration contracts, the Exchange proposes to amend certain of its rules, as described below. The Exchange is also proposing, with this filing, to replace any historic reference in the purpose section of any past Exchange rule filings or previously released circulars, notices or bulletins to any expiration date other than Friday for a monthly expiration contract with the new Friday standard.

First, the Exchange proposes to amend Rule 5.19 (Terms of Index Option Contracts) with respect to the permitted timing for adding new series of index option contracts so as to differentiate between Friday and Saturday expirations. The Exchange proposes to specify that new series of index option contracts may be added up to, but not on or after, the fourth business day prior to expiration for an option contract expiring on a business day (i.e., up to, but not on or after, the opening of trading on Monday morning for Friday expirations), or, in the case of an option contract expiring on a day that is not a business day, and as is currently the case for Saturday expirations, the fifth business day prior to expiration.

Second, the Exchange proposes to amend Rule 5.24 (Exercise of Option Contracts) in two ways, both of which would be to differentiate between Friday and Saturday expirations. First, the Exchange would specify that exercises of expiring American-style, cash-settled index options would not be

[7] *See* OCC Rule 805(g).

[8] OCC's exercise-by-exception procedures are described in OCC Rule 805(d), which generally provides that each clearing member will automatically be deemed to have submitted an exercise notice immediately prior to the expiration time for all in-the-money option contracts unless the clearing member has instructed OCC otherwise in a written exercise notice.

[9] *See supra* note 4. The exercise-by-exception window for weekly and quarterly expiration options is from 6:00 p.m. to 7:00 p.m. CT.

[10] The new expiration schedule for Friday expiration processing is similar to the expiration schedule for weekly options, which begins at 6:00 p.m. CT on Friday evening and ends at 11:30 p.m. CT on Friday evening. All timeframes would be set forth in OCC's procedures and subject to change based on OCC's experience with Friday expiration processing.

prohibited on the business day of their expiration (i.e., for Friday expirations), or, in the case of option contracts expiring on a day that is not a business day, and as is currently the case for Saturday expirations, on the last business day prior to their expiration. The Exchange would also specify that, with respect to European-style index option contracts, no OTP Holder or OTP Firm shall accept or tender to the OCC an exercise notice prior to the opening of business on the business day of expiration (i.e., for Friday expirations), or, in the case of an option contract expiring on a day that is not a business day, and as is currently the case for Saturday expirations, prior to the opening of business on the business day before such option contracts will expire.

Third, the Exchange proposes to amend Rule 6.1 (Applicability, Definitions and References) in order to amend the definition of ''Expiration Date.'' The proposed amendment would add text to differentiate between option contracts that expire on a non-business day, as is currently the case with monthly expiration contracts, and option contracts that expire on a business day, as would be the case under the proposed new timing of expiration (i.e., Friday instead of Saturday). The amended definition would include a reference to the February 1, 2015 transition date, after which virtually all monthly expiration contracts would actually expire on Friday (rather than, beginning June 21, 2013, only being processed on Friday). The amended definition would also include a reference to long-term option contracts expiring on or after February 1, 2015 that the OCC may designate as ''grandfathered,'' for which the expiration date would continue to be the Saturday immediately following the third Friday of the expiration month.

Fourth, the Exchange proposes to amend Commentary .06 of Rule 6.4 (Series of Options Open for Trading) to differentiate between Friday and Saturday expirations. Specifically, the Exchange would specify that additional series of individual stock options may be added in unusual market conditions until the close of trading on the business day prior to expiration in the case of an option contract expiring on a business day (i.e., Thursday for a Friday expiration), or, in the case of an option contract expiring on a day that is not a business day, and as is currently the case for Saturday expirations, until the close of trading on the second business day prior to expiration (i.e., until the close of trading on Thursday for Saturday expirations).

Fifth, the Exchange proposes to amend Rule 6.11 (Other Restrictions on Exchange Option Transactions and Exercises) with respect to certain timing for restrictions on the exercise of option contracts. Specifically, the Exchange proposes to specify that the 10-business-day period referenced in Rule 6.11(a)(2) includes the expiration date for an option contract that expires on a business day. The Exchange also proposes to specify that, with respect to index options, restrictions on exercise may be in effect until the opening of business on the business day of their expiration (i.e., for Friday expirations), or, in the case of an option contract expiring on a day that is not a business day, and as is currently the case for Saturday expirations, on the last business day before the expiration date. Finally, the Exchange proposes to specify in Rule 6.11(a)(3)(B) that exercises of expiring American-style, cash-settled index options are not prohibited on the business day of their expiration (i.e., for Friday expirations), or, in the case of an option contract expiring on a day that is not a business day, and as is currently the case for Saturday expirations, on the last business day prior to their expiration.

Sixth, the Exchange proposes to amend Commentary .01 of Rule 6.17 (Verification of Compared Trades and Reconciliation of Uncompared Trades) to eliminate the requirement that authorized representatives of OTP Holders and OTP Firms must either be present on the Trading Floor or be accessible via telephone or email each Saturday immediately prior to expiration for a period of one hour beginning at 6:00 a.m. Pacific Time, or for longer periods of time as may be determined from time to time by an Exchange representative. Such availability would no longer be required on Saturday mornings. A corresponding cross reference to this time period within Commentary .01 of Rule 6.17 would also be eliminated. It would continue to be considered a violation of Rule 6.17 if a responsible OTP Holder or OTP Firm is not available to reconcile an uncompared trade when contacted by NYSE Arca Trade Processing Department.

Seventh, the Exchange proposes to amend Rule 6.24 (Exercise of Option Contracts) in several areas, each of which is designed to differentiate between Friday and Saturday expirations. First, the Exchange proposes to specify in Rule 6.24(b) that special procedures apply to the exercise of equity options on the business day of their expiration (i.e., for Friday expirations), or, in the case of an option contract expiring on a day that is not a business day, and as is currently the case for Saturday expirations, on the last business day before their expiration. Second, the Exchange proposes to specify in Rule 6.24(c) that, regarding exercise cut-off times, option holders have until 5:30 p.m. ET on the business day of their expiration (i.e., for Friday expirations), or, in the case of an option contract expiring on a day that is not a business day, and as is currently the case for Saturday expirations, on the business day immediately prior to the expiration date. Third, the Exchange proposes to specify in Rule 6.24(g) that the advance notice described therein is applicable if provided by the Exchange on or before 5:30 p.m. ET on the business day (i.e., on Thursday) immediately prior to the business day of expiration (i.e., for Friday expirations), or, in the case of an option contract expiring on a day that is not a business day, and as is currently the case for Saturday expirations, the business day immediately prior to the last business day before the expiration date (i.e., Thursday for Saturday expirations). Fourth, the Exchange proposes to amend Commentary .03 of Rule 6.24 to specify that the reference therein to ''unusual circumstances'' includes, but is not limited to, a significant news announcement concerning the underlying security of an option contract that is scheduled to be released just after the close on the business day the option contract expires (i.e., for Friday expirations), or, in the case of an option contract expiring on a day that is not a business day, and as is currently the case for Saturday expirations, the business day immediately prior to expiration.

Eighth, the Exchange proposes to amend Rule 6.65 (Trading Halts and Suspensions) to differentiate between Friday and Saturday expirations. Specifically, the Exchange proposes to specify in Rule 6.65(d)(7) that, in the event that any of the events described in Rule 6.65(d)(1)—(6) should occur on the business day of expiration (i.e., for Friday expirations), or, in the case of an option contract expiring on a day that is not a business day, and as is currently the case for Saturday expirations, on the business day prior to expiration, it is the preference of the Exchange to allow trading to continue on that date.

Finally, the Exchange proposes to amend Rule 6.87 (Obvious Errors and Catastrophic Errors) to add greater specificity regarding the timing surrounding notifying the Exchange of a ''Catastrophic Error.'' Specifically, the Exchange proposes to specify that, for such transactions in an expiring options

series that take place on an expiration day that is a business day (i.e., for Friday expirations), an OTP Holder must notify the Exchange by 5:00 p.m. ET that same day. For such transactions in an options series that take place on the business day immediately prior to an expiration day that is not a business day (i.e., for Saturday expirations), an OTP Holder must notify the Exchange by 5:00 p.m. ET on such business day (i.e., on Friday).

The Exchange notes that the proposed rule change is not otherwise intended to address any other issues, and the Exchange is not aware of any problems that OTP Holders or OTP Firms would have in complying with the proposed rule change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[11] in general, and Section 6(b)(5) of the Act,[12] in particular. The proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes that implementing the change to Friday expiration processing and eventually transitioning to Friday expiration for all monthly expiration contracts would foster cooperation and coordination with persons engaged in facilitating transactions in securities. Specifically, and as noted above, it has been a long-term goal of OCC and its clearing members to move the expiration process for all monthly expiration contracts from Saturday to Friday night. Eliminating Saturday expirations would allow OCC to streamline the expiration process for all monthly expiration contracts and increase operational efficiencies for OCC and its clearing members.

The Exchange further believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system by compressing the operational timeframe for processing the options expirations, such that OCC clearing members would be required to reconcile options trades on the trade date, which would enhance intra-day risk management of cleared trades by the clearing member and promote real-time trade date reconciliation and position balancing by clearing members.

The Exchange further believes that the proposed rule change is consistent with the Act because the extended period between cutoff time and expiration of options is no longer necessary given modern technology. In this regard, and based on significant dialogue between the Exchange, other option exchanges, the OCC and its clearing members regarding the move to Friday expiration, the Exchange believes that the adoption of Friday expiration for monthly expiration contracts is best accomplished through an appropriate transition period during which processing activity for all options, whether expiring on Friday or Saturday, has moved to Friday, followed by a change in the expiration day for new series of options.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

In accordance with Section 6(b)(8) of the Act,[13] 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 proposed rule change is not designed to address any aspect of competition, whether between the Exchange and its competitors, or among market participants. Instead, the proposed rule change is designed to allow OCC to streamline the expiration process for all monthly expiration contracts and increase operational efficiencies for OCC and its clearing members. The proposed rule change also will allow OCC and its clearing members to reduce operational risk. Moreover, OCC has coordinated moving to a Friday night expiration process with options industry participants, including the Exchange, and has also obtained assurance from all such participants that they are able to adhere to OCC's Friday night expiration implementation schedule. Therefore, the Exchange does not believe the proposed rule change would 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 solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[14] and Rule 19b–4(f)(6) thereunder.[15] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[16]

A proposed rule change filed under Rule 19b–4(f)(6)[17] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[18] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission notes that waiver of the operative delay would permit the Exchange to implement the changes proposed herein immediately.

Under the proposal, the Exchange would amend certain of its rules pertaining to the trading of options in order to change the expiration date for most option contracts to the third Friday of the expiration month instead of the Saturday following the third Friday. The Exchange represents that a waiver of the 30-day operative delay is necessary and appropriate to not disrupt the industry scheduled listing of Long Term Equity Options Series (''LEAPS'') expiring in January 2016. Specifically, the Exchange notes that, pursuant to the Options Listing Procedures Plan (an approved national market system plan) and its Rule 6.4(e)(ii), the Options Clearing Corporation and all national securities exchanges that trade options, including

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78f(b)(8).

[14] 15 U.S.C. 78s(b)(3)(A)(iii).

[15] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] 17 CFR 240.19b–4(f)(6).

[18] 17 CFR 240.19b–4(f)(6)(iii).

the Exchange, agreed on adding new LEAPS expiring in January 2016 on September 16, 2013, for those issues that are on the January expiration cycle. The Exchange further represents that this date was published in 2012 and has been relied upon across the industry.

Since the Exchange's Rule 6.1(17) currently defines ''expiration date'' as the ''Saturday immediately following the third Friday of the expiration month,'' the Exchange will not be able to list monthly option contracts expiring on any day other than a Saturday until this proposal becomes effective. As such, the Exchange represents that it will be at a significant competitive disadvantage, and it requests the waiver to facilitate and coordinate with the listing of the 2016 LEAPS on September 16, 2013. Additionally, the Exchange notes that no other provision of the proposal will have an immediate impact on market participants because no monthly options expiring in the next 30 days have a Friday expiration date. Based on the Exchange representations above, and since the proposal is based, in part, on a proposal submitted by the OCC and approved by the Commission,[19] the Commission waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing.[20]

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)[21] 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–2013–88 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–2013–88. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549–1090. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–NYSEARCA–2013–88 and should be submitted on or before October 8, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–22512 Filed 9–16–13; 8:45 am]

**BILLING CODE 8011–01–P**

[19] *See supra* note 4.

[20] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[21] 15 U.S.C. 78s(b)(2)(B).

[22] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–70369; File No. SR–BOX–2013–44]**

## Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule To Make Permanent the Pilot Program of Liquidity Fees and Credits for Certain Transactions in the BOX Price Improvement Period

September 11, 2013.

Pursuant to Section 19(b)(1) under the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 30, 2013, BOX Options Exchange LLC (the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend the Fee Schedule to amend the Fee Schedule [sic] to make permanent the pilot program of Liquidity Fees and Credits for certain transactions in the BOX Price Improvement Period (''PIP'') on the BOX Market LLC (''BOX'') options facility. 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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

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, Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to amend the BOX Fee Schedule to make permanent the pilot program of Liquidity Fees and Credits for certain transactions in the BOX PIP or (the ''Program''). The Program was approved on a pilot basis in February 2012 and is scheduled to expire on August 31, 2013.[5] The Exchange believes the data collected on PIP transactions over the past two years demonstrates that the Program does not place an undue burden on competition and proposes to make the applicable fees and credits free from any pilot restrictions.

Under the Program, transactions in the BOX PIP are assessed either a fee for adding liquidity or provided a credit for removing liquidity regardless of account type. PIP Orders (i.e., the agency orders opposite the Primary Improvement Order[6]) receive the ''removal'' credit and Improvement Orders[7] are charged the ''add'' fee. In particular, the Program permits a fee for adding liquidity or a credit for removing liquidity of $0.75, regardless of account type, for PIP transactions where the minimum price variation is greater than $0.01 (i.e., all non-Penny Pilot Classes, and Penny Pilot Classes where the trade price is equal to or greater than $3.00, excluding QQQ, SPY, and IWM).[8] The liquidity fees and credits are in addition to any applicable Exchange Fees as described in Section I of the Fee Schedule.

During the pilot period the Exchange has submitted to the Commission, and made publicly available on the Exchange Web site, monthly reports containing statistics on percent and amount of price improvement, the number of responders to a PIP auction, and the retention rates of Initiating Participants and those market makers who received PIP directed orders. Specifically, each report contains the following PIP transaction data in series traded in penny increments compared to series traded in nickel increments, subdivided by when BOX is at the NBBO and when BOX is not at the NBBO, including: (1) Volume by number of contracts traded; (2) number of contracts executed by the Initiating Participant as compared to others (''retention rate''); (3) percentage of contracts receiving price improvement when the Initiating Participant is the contra party and when others are the contra party; (4) average number of responders in the PIP; (5) average price improvement amount when the Initiating Participant is the contra party; (6) average price improvement amount when others are the contra party; and (7) percentage of contracts receiving price improvement greater than $0.01, $0.02 and $0.03 when the Initiating Participant is the contra party and when others are the contra party.[9]

BOX provided these reports so the Commission could assess the impact of the Program on the competitiveness of the PIP and the extent of price improvement obtained for customers. Exhibit 3 to the Form 19b–4 contains PIP transaction data sets from June 2011 through July 2013.[10] The Exchange has evaluated these reports to determine the impact of the Program on competition and price improvement, and believes the data confirms that the Program has not placed an undue burden on competition or lessened the amount of price improvement in the aggregate for customers in the PIP.[11]

Overall, the Exchange believes that in the aggregate, the long term data trends demonstrate there has not been a decline in market quality. BOX's PIP auction continues to provide significant opportunities for price improvement and the data provided by BOX does not suggest any significant adverse impact of the Program on the competitiveness of the PIP auction or the extent of price improvement for orders executed in the PIP. Instead, the Exchange believes the Program has been successful at encouraging Participants to submit their customer orders to the PIP and allowing those orders the opportunity to benefit from its potential price improvement.

Before discussing the general trends below, the Exchange acknowledges that certain data points have seen significant fluctuation during the course of the Program. These variations are a result of conditions which the Exchange has no control over, such as Participant behavior changes, competitor pricing changes and overall market volatility. For example, market volatility creates wider spreads and can lead to significant growth in price improvement. Similarly, a change in Participant behavior can also have a considerable impact on specific data points in these reports.

Since the Program went into effect in February 2012, [12] the Exchange has focused its analysis on the average data from two three-month periods; one before the Program began (November 2011 through January 2012) and one that reflects the most recent impact of the Program (May 2013 through July 2013). The Exchange believes that using these two periods offers the best comparison of the PIP data because the first period reveals PIP data trends from when the Program was not yet in place, compared directly with the most recent PIP data trends. Additionally, averaging the data over a three-month period

[5] *See* Securities Exchange Act Release Nos. 66278 (January 30, 2012), 77 FR 5590 (February 3, 2012) Commission Order Granting Accelerated Approval of the BOX Credits and Fees for PIP Transactions on a pilot basis (SR–BX–2011–046), 66979 (May 14, 2012), 77 FR 29740 (May 18, 2012) (Notice of Filing and Immediate Effectiveness to adopt the Fee Schedule for trading on BOX which included the Program) (SR–BOX–2012–002), and 69054 (March 7, 2013), 78 FR 16025(March 13, 2013) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Fee Schedule for Trading on BOX) (SR–BOX–2013–09).

[6] A Primary Improvement Order is the matching contra order submitted to the PIP on the opposite side of an agency order.

[7] An Improvement Order is a response to a PIP auction. An Unrelated Order that is not immediately marketable will be charged as an Improvement Order when it executes against a PIP Order.

[8] The Exchange notes that the Program also includes a fee for adding liquidity or a credit for removing liquidity of $0.30, regardless of account type, for PIP transactions where the minimum price variation is $0.01 (Penny Pilot classes where trade price is less than $3.00, and all series in QQQ, SPY & IWM).

[9] In June 2013 the Exchange posted revised reports for November 2011 through April 2013.

[10] The Exchange believes the data gathered over this time period adequately represents the impact of the Program. While fees and credits applicable under the Program first went into effect on August 1, 2011, the Program was suspended by the Commission on September 13, 2011. The Exchange then filed a notice of intention to petition for review on September 20, 2011, which triggered an automatic stay of the suspension and the previous fee schedule was reinstated. On October 19, 2011, the Commission denied the Exchange's petition and the applicable fees and credits were once again suspended. The Commission approved the proposed fee change on a pilot basis on January 30, 2012 and the Program has been in effect on the Exchange since February 1, 2012. *See* Securities Exchange Commission Release Nos. 65330 (September 13, 2011), 76 FR 58065, 58066 (September 19, 2011) (SR–BX–2011–046) (Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend the BOX Fee Schedule With Respect to Credits and Fees for Transactions in the BOX Price Improvement Period); and 66278 (January 30, 2012), 77 FR 5590 (February 3, 2012) (SR–BX–2011–46) (''Approval Order'').

[11] The Commission released a memorandum with graphical representations of the BOX PIP data, which match the reports provided by the Exchange and referenced in this filing. *See* Memorandum on File No. SR–BOX–2013–09 from August, 16, 2013; *https://www.sec.gov/rules/sro/box/2012/box-2013–09–2012–002-pipmemo.pdf.*

[12] *See supra,* note 10 [sic].

helps to negate any of the significant fluctuations discussed in the preceding paragraph.

A key indicator of competition is the average number of responders to the PIP auction. One of the central concerns expressed by commenters at the outset of the Program was that the increased fees and credits would burden competition by effectively barring certain participants from competing with initiators.[13] Instead of declining, as predicted in the comment letters, the average number of responders has risen throughout the length of the Program. From November 2011 through January 2012 the average number of responders for PIP transactions when BOX was at the NBBO was 1.63 for penny classes and 2.41 for non-penny classes, and when BOX was not at the NBBO the average number of responders was 1.53 for penny classes and 2.21 for non-penny classes. From May 2013 through July 2013, the same data points rose to 3.14 and 4.05 when BOX was at the NBBO and 2.24 and 2.86 when BOX was not at the NBBO. This growth is also clear in the graphical representations created by the Commission based on the BOX PIP data.[14] The Exchange believes this growth proves that the fees and credits assessed under the Program are not prohibitively high and therefore do not prevent responders from competing in the auction with the firm that submitted the original PIP order.

Similarly, the number of PIP transactions in non-penny classes, the class affected by the Program, has continued to grow. From November 2011 through January 2012, the monthly volume averaged approximately 650,000 contracts when BOX was at the NBBO and 550,000 when BOX was not at the NBBO. From May 2013 through July 2013, the same data points averaged 850,000 contracts when BOX was at the NBBO and 900,000 contracts when BOX was not at the NBBO.

The reports also showed growth in the average percentage of orders receiving price improvement when BOX was at the NBBO when compared to the total monthly trade volume on BOX.[15] In fact, in the last three months of the Program (May 2013 through July 2013) more than 75% of all orders on non-penny series have received at least some improvement. From November 2011 through January 2012, this number never rose above 56% and averaged 53%. Clearly the Program did not make it more challenging for market participants to offer price improvement in the PIP auctions, as some critics argued in their comment letters.[16]

Finally, while the overall average price improvement, when improved, in non-penny classes fell slightly throughout the Program, most of this decline came from orders that were improved by the Initiator. From November 2011 through January 2012, the average price improvement of non-penny PIP transactions was $0.037 for those orders receiving improvement. In comparable data from May 2013 through July 2013, the average price improvement for those orders receiving improvement fell to $0.029. However, this same data indicator increased for orders improved by Directed Non-Affiliate responders, both when BOX was at the NBBO and not at the NBBO. This number also rose for ''Other'' responders when BOX was not at the NBBO. The Exchange believes this data demonstrates that the Program did not have an adverse impact on the extent of price improvement by making it ''economically prohibitive for anyone other than the initiator to respond'' to the PIP Auction.[17]

Another key indicator of competition, the average retention rate, measures the retention of the PIP order by the PIP initiator. While this data point has increased over the life of the Program, the average retention rate in non-penny classes was 38% from November 2011 through January 2012, and 51% from May 2013 through July 2013; the growth has centered in non-penny transactions where BOX was at the NBBO and retention rates where BOX was not at the NBBO have remained relatively inline. The Exchange believes this uptick was a result of the reduced penny transaction volume in the PIP, where lower volume signals fewer participants in the PIP process, and does not indicate that the Program gives Initiators a competitive edge to retain a greater percentage of their orders.

For the reasons cited above, the Exchange believes the data confirms that competition did not decrease as a result of the additional fees and credits placed on non-penny PIP transactions. In fact, the reports show that in the aggregate, competition has remained inline and even grown throughout the length of the Program and there has been no adverse impact on price improvement.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[18] in general, and Section 6(b)(4) of the Act,[19] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among BOX Options Participants and other persons using its facilities. The Exchange also believes that the proposal is consistent with Section 6(b)(5) of the Act,[20] which, among other things, requires that rules of a national securities exchange be 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, to protect investors and the public interest, and to not permit unfair discrimination between customers, issuers, brokers, or dealers, and Section 6(b)(8) of the Act,[21] which requires that the rules of a national securities exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In particular, the proposed change will result in permanent fees and credits for PIP transactions, which will in turn give BOX Participants greater certainty with regard to the potential fees and credits they will be assessed when participating in the PIP.

As stated in previous filings[22], the Exchange believes that it is reasonable and equitable to provide the proposed credit to any Participant that removes liquidity from the BOX PIP. The Exchange further believes these credits will continue to attract order flow to BOX, resulting in greater liquidity to the benefit of all market participants. The Exchange believes that the proposed fees for adding liquidity and credits for removing liquidity are equitable and not unfairly discriminatory because such fees and credits apply uniformly to all categories of Participants, across all account types.

Further, the Exchange believes the proposed fees for PIP transactions to be reasonable. BOX operates within a highly competitive market in which market participants can readily direct order flow to any of several other

[13] *See* Letters to Elizabeth Murphy, Secretary, Commission, from John C. Nagel, Managing Director and General Counsel, Citadel Securities LLC, dated August 12, 2011 (''Citadel Letter''); Andrew Stevens, Legal Counsel, IMC Financial Markets dated August 15, 2011 (''IMC Letter''); Michael J. Simon, Secretary, ISE, dated August 22, 2011 (''ISE Letter), and Christopher Nagy, Managing Director Order Strategy, TD Ameritrade Inc., dated September 12, 2011 (''TD Ameritrade Letter'').

[14] *See supra,* note 10 at page 9.

[15] BOX trade volume can be found on the BOX Web site: *http://boxexchange.com/box-trade-volumes/.*

[16] *See supra,* note 13.

[17] *See* Citadel Letter, supra note 13 at page 2.

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(4).

[20] 15 U.S.C. 78f(b)(5).

[21] 15 U.S.C. 78f(b)(8).

[22] *See supra,* note 5.

competing venues if they deem fee levels at a particular venue to be excessive. The BOX credits and fees for PIP transactions are intended to attract order flow to BOX by offering incentives to all market participants to submit their orders to the PIP for potential price improvement. BOX notes that the fees collected will not necessarily result in additional revenue to BOX, but will simply allow BOX to provide the credit incentive to Participants to attract additional order flow to the PIP. BOX believes it is appropriate to provide incentives to market participants to use PIP, resulting in benefit to customers through potential price improvement, and to all market participants from greater liquidity on BOX.

In particular, the proposed change will allow the Exchange to continue the Program free of any pilot conditions which the Exchange believes are no longer necessary. The Program was put in place to determine the full impact of the liquidity fees and credits on competitiveness and price improvement in the PIP. The applicable fees and credits have been in place for eighteen months,[23] and there is no evidence to suggest that the Program has had any of the negative effects on the PIP that were predicted in the comment letters.[24] As such, removal of the pilot restrictions is the logical next step.

In conclusion, the Exchange believes the data provided over the length of the Program demonstrates that there has been no adverse impact on the competitiveness of the PIP auction or the extent of price improvement in series that trade in non-penny increments. As such, the Exchange believes the proposed rule change is consistent with the Act.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

While some have argued that the Program creates a disparity between the fees an Initiating Participant pays and the fees a competitive responder pays in the PIP that may make the Program discriminatory and an undue burden on competition, the Exchange believes the Program provides incentives for market participants to submit customer order flow to BOX and thus, creates a greater opportunity for retail customers to receive additional price improvement. The PIP provides the opportunity for market participants to compete for customer orders, and has no limitations regarding the number of Market Makers, Options Participants that are not Market Makers, and customers that can participate and compete for orders in the PIP. BOX asserts that Participants are actively competing for customer orders, which is clearly supported by the simple fact that price improvement has continued to occur in the PIP through the length of the Program.

BOX notes that its market model and fees are generally intended to benefit retail customers by providing incentives for Participants to submit their customer order flow to BOX, and to the PIP in particular. BOX makes a substantial amount of PIP-related data and statistics available to the public on its Web site *www.boxexchange.com*. Specifically, daily PIP volumes and average price improvement are available at: *http://boxexchange.com/box-trade-volumes/;* and BOX execution quality reports at: *http://boxexchange.com/execution-quality-report/*. The data indisputably supports that the PIP provides price improvement for customer orders.

Additionally, the Exchange believes the Program is more transparent than payment for order flow (''PFOF'') arrangements and notes its belief that the credit to remove liquidity on BOX is generally less than what firms receive through PFOF.

For the reasons stated above, the Exchange does not believe that the proposed rule change will impose any burden on competition either among BOX Participants, or among the various options exchanges, which is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act[25] and Rule 19b–4(f)(2) thereunder,[26] because it establishes or changes a due, or fee.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further 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–2013–44 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–2013–44. 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–BOX–2013–44 and should be submitted on or before October 8, 2013.

[23] *See supra,* note 5

[24] *See supra,* note 13.

[25] 15 U.S.C. 78s(b)(3)(A)(ii).

[26] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–22509 Filed 9–16–13; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–70370; File No. SR–C2–2013–033]**

## Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule

September 11, 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 August 30, 2013, C2 Options Exchange, Incorporated (the ''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.c2exchange.com/Legal/*), at the Exchange's Office of the Secretary, and at the Commission'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. Specifically, the Exchange proposes to adopt a set of fees for the Russell 2000 Index (''RUT''), both for simple and complex orders (and to specify that the current fees that apply to multiply-listed index, ETF and ETN options classes do not apply to RUT). For simple, non-complex RUT orders, the Exchange proposes to assess the following per-contract fees structure (rebates in parentheses):

| | Maker | Taker fee |
|---|---|---|
| Public Customer | ($.75)* | $.80 |
| C2 Market-Maker | .00 | .80 |
| All Other Origins (Professional Customer, Firm, Broker/Dealer, non-C2 Market-Maker, JBO, etc.) | .50 | .80 |
| Trades on the Open | .00 | .00 |

As with simple, non-complex orders in other multiply-listed index, ETF and ETN options classes, rebates do not apply to orders that trade with Public Customer complex orders. In such a circumstance, there will be no fee or rebate (since Public Customer complex orders also receive rebates pursuant to the proposed changes). The Exchange believes that providing a rebate for Public Customer Maker orders, and assessing no fee for Market-Maker Maker orders, will incentivize the entry of such orders (which will provide more trading opportunities for all market participants wishing to Take such orders). Further, market participants often prefer to trade against Public Customer orders, and providing a rebate for Public Customer Maker orders will encourage Public Customers to enter such orders, giving other market participants more opportunities to Take these preferable orders. The Exchange's proposed Taker fee is intended to be competitive with other exchanges, which assess higher Taker fees for RUT,[3] and which also assess a higher RUT License Surcharge fee than the amount the Exchange proposes to assess herein.[4]

For complex orders in RUT, the Exchange proposes to assess the following per-contract fees structure (rebates in parentheses):

| | Maker fee/ (Rebate) | Taker fee/ (Rebate) |
|---|---|---|
| Public Customer | ($.75)* | ($.75)* |
| C2 Market-Maker | .85 | .85 |
| All Other Origins (Professional Customer, Firm, Broker/Dealer, non-C2 Market-Maker, JBO, etc.) | .85 | .85 |
| Trades on the Open | .00 | .00 |

As with complex orders in other multiply-listed index, ETF and ETN options classes, a rebate will only apply to Public Customer complex orders that trade with non-Public Customer complex orders. In other circumstances, there will be no Maker or Taker fee or rebate. The Exchange believes that providing a rebate for Public Customer orders will incentivize Public Customers to execute such orders (which will provide more trading opportunities for all market participants wishing to trade with such orders). Further, market participants often prefer to trade against Public Customer orders, and providing a rebate for Public Customer orders will encourage Public

[27] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See NYSE Arca, Inc. (''Arca'') Fee Schedule, Section titled ''Trade-Related Charges for Standard Options'', Transaction Fee table describing Electronic Executions in Non Penny Pilot Issues.

[4] See Arca Fee Schedule, Royalty Fees table.

Customers to effect such orders, giving other market participants more opportunities to trade with these preferable orders. The Exchange's proposed Taker fee is intended to be competitive with other exchanges, which assess higher similar fees for RUT,[5] and which also assess a higher RUT License Surcharge fee than the amount the Exchange proposes to assess herein.[6]

As with both simple and complex orders in other multiply-listed index, ETF and ETN options classes, the Exchange proposes to not assess any fee for RUT Trades on the Open (either simple or complex).

The Exchange also proposes to adopt a $0.30 per contract RUT Index License Surcharge Fee that will apply to all non-Public Customer transactions. The RUT Index License Surcharge Fee charged by the Exchange reflects the pass-through charges associated with the licensing of RUT. The proposed amount of the Index License Surcharge Fee for RUT of $0.30 per contract is a reflection of the 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. Other exchanges assess a higher RUT surcharge fee than the Exchange.[7] The Exchange proposes to exempt Public Customers from this fee because the Exchange believes that this will incentivize Public Customers to send RUT orders to the Exchange, and because other market participants prefer to trade with Public Customers. Therefore, this should provide increased volume and greater liquidity (benefitting all market participants), and more trading opportunities for these other market participants to trade with these Public Customer orders with which they prefer trading.

The proposed changes are to take effect on September 3, 2013.

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 Section 6(b)(4) of the Act,[9] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

The Exchange believes that the proposed Maker fees for RUT simple orders are reasonable because Public Customers will be able to receive a rebate instead of paying a fee, C2 Market-Makers will be able to avoid paying a fee, and orders from all other origins will be assessed a fee amount that is within the Exchange's normal range of fees, and is the same as the amount assessed by other exchanges.[10] The Exchange believes it is equitable and not unfairly discriminatory to provide a rebate to Public Customers because the Exchange believes that this will incentivize Public Customers to send RUT orders to the Exchange, and because other market participants prefer to trade with Public Customers. Therefore, this should provide increased volume and greater liquidity (benefitting all market participants), and more trading opportunities for these other market participants to trade with these Public Customer orders with which they prefer trading. Further, there is a history within the options industry of providing preferential pricing for Public Customers, and this fact is evidenced in the fee schedules of many options exchanges, (including C2). The Exchange believes that assessing no fee for C2 Market-Maker RUT Maker orders is equitable and not unfairly discriminatory because this will incentivize C2 Market-Makers to execute RUT orders on the Exchange, thereby providing increased volume and greater liquidity, which benefits all market participants. Further, C2 Market-Makers undertake certain obligations, such as quoting obligations, that other market participants do not have. The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to apply to simple Public Customer Maker RUT orders the clause that states that ''rebates do not apply to orders that trade with Public Customer complex orders. In such a circumstance, there will be no fee or rebate'' because these Public Customer orders will still not be assessed a fee, and because it would not be economically viable to provide a rebate on both sides of an order when no fee is being collected. Further, this clause applies to simple Public Customer Maker orders in all other multiply-listed index, ETF and ETN options classes. The Exchange believes that the proposed Taker fees for RUT simple orders are reasonable, equitable and not unfairly discriminatory because they are lower than those assessed by other exchanges[11] and because they are equivalent for all market participants.

The Exchange believes that its proposed rebates for Public Customer complex RUT orders are reasonable because they will allow Public Customer to receive a rebate for such orders instead of paying a fee. The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to apply to complex Public Customer RUT orders the clause that states that ''a rebate will only apply to Public Customer complex orders that trade with non-Public Customer complex orders. In other circumstances, there will be no Maker or Taker fee or rebate'' because these Public Customer orders will still not be assessed a fee, and this would prevent a situation in which a rebate would be given on both sides of an order when a fee is not assessed (such situations not being economically viable). Further, this clause applies to complex Public Customer orders in all other multiply-listed index, ETF and ETN options classes. The Exchange believes that its proposed fees for complex RUT orders originating from all other origins (including C2 Market-Makers) are reasonable because they are the same amount of the fees assessed for complex RUT transactions to similar market participants at other exchanges.[12] The Exchange believes that these fees are equitable and not unfairly discriminatory because they will be applied equally to all market participants who qualify for such fees. The Exchange believes that it is equitable and not unfairly discriminatory to provide rebates for complex Public Customer RUT orders because the Exchange believes that this will incentivize Public Customers to execute RUT orders to the Exchange, and because other market participants prefer to trade with Public Customers. Therefore, this should provide increased volume and greater liquidity (benefitting

[5] See Arca Fee Schedule, Section titled ''Electronic Complex Order Executions''. Note that RUT is a Non-Penny Pilot Issue.

[6] See Arca Fee Schedule, Royalty Fees table.

[7] *See* SR–NYSEMKT–2013–65, which increased the NYSE MKT LLC (''AMEX'') Royalty Fee for RUT from $0.15 per contract to $0.40 per contract.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] *See* Arca Fee Schedule, Section titled ''Trade-Related Charges for Standard Options'', Transaction Fee table describing Electronic Executions in Non Penny Pilot Issues, which shows that Firms and Broker-Dealers are assessed a $0.50 Maker fee for RUT transactions.

[11] *See* Arca Fee Schedule, Section titled ''Trade-Related Charges for Standard Options'', Transaction Fee table describing Electronic Executions in Non Penny Pilot Issues.

[12] See Arca Fee Schedule, Section titled ''Electronic Complex Order Executions''. Note that RUT is a Non-Penny Pilot Issue.

all market participants), and more trading opportunities for these other market participants to trade with these Public Customer orders with which they prefer trading. Further, there is a history within the options industry of providing preferential pricing for Public Customers, and this fact is evidenced in the fee schedules of many options exchanges, (including C2).

The Exchange believes that it is reasonable to assess no fees for RUT Trades on the Open because this will allow all market participants to avoid paying fees for such trades. The Exchange believes that this is equitable and not unfairly discriminatory because it will apply to all market participants, and because the Exchange currently does not assess fees for Trades on the Open for other multiply-listed index, ETF and ETN options.

The Exchange believes that the proposed RUT Index License Surcharge Fee is reasonable because Surcharge Fees charged by the Exchange reflect the pass-through charges associated with the licensing of certain products, including RUT. The proposed amount is therefore a direct result of the amount of the licensing fee charged to the Exchange by the index provider and the owner of the intellectual property associated with the index. This amount is equitable and not unfairly discriminatory because it will be assessed to all market participants to whom the RUT Surcharge Fee applies. Also, other exchanges have recently increased their RUT surcharge fees to an even greater amount than the Exchange's proposed amount.[13] The Exchange believes that it is equitable and not unfairly discriminatory to exempt Public Customers from this fee because the Exchange believes that this will incentivize Public Customers to send RUT orders to the Exchange, and because other market participants prefer to trade with Public Customers. Therefore, this should provide increased volume and greater liquidity (benefitting all market participants), and more trading opportunities for these other market participants to trade with these Public Customer orders with which they prefer trading. Further, there is a history within the options industry of providing preferential pricing for Public Customers, and this fact is evidenced in the fee schedules of many options exchanges, (including C2).

[13] *See* SR–NYSEMKT–2013–65, which increased the AMEX Royalty Fee for RUT from $0.15 per contract to $0.40 per contract.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

C2 does not believe that the proposed fees structure for RUT will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. While there are circumstances wherein a Public Customer receives a rebate (or, in the case of the Index License Surcharge Fee, is exempt from such fee), the Exchange believes that this will incentivize Public Customers to execute RUT orders to the Exchange, and other market participants prefer to trade with Public Customers. Therefore, these rebates should provide increased volume and greater liquidity (benefitting all market participants), and more trading opportunities for these other market participants to trade with these Public Customer orders with which they prefer trading. Further, there is a history within the options industry of providing preferential pricing for Public Customers, and this fact is evidenced in the fee schedules of many options exchanges, (including C2). While there is also a place within the proposed RUT fees structure in which C2 Market-Makers are not assessed a fee while other market participants are, C2 Market-Makers must undertake certain obligations, such as quoting obligations, that other market participants may not have. Further, the Exchange believes that this will incentivize C2 Market-Makers to execute RUT orders on the Exchange, thereby providing increased volume and greater liquidity, which benefits all market participants.

C2 does not believe that the proposed fees structure for RUT will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Indeed, the Exchange's proposed fees structure for RUT is intended to increase competition in RUT. The Exchange believes that its pricing structure is competitive with, and better than, the pricing structure for RUT at other exchanges. For example, when factoring in the lower Index License Surcharge Fee at C2 (and indeed even when not factoring in this difference in some circumstances), the Exchange believes that its RUT pricing is preferable for market participants to that offered at Arca.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[14] and paragraph (f) of Rule 19b–4[15] 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–C2–2013–033 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–C2–2013–033. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f).

printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–C2–2013–033, and should be submitted on or before October 8, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–22510 Filed 9–16–13; 8:45 am]

**BILLING CODE 8011–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–70373; File No. SR–NYSEMKT–2013–73]**

## Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Certain of Its Rules Pertaining to the Trading of Options in Order To Change the Expiration Date for Most Option Contracts to the Third Friday of the Expiration Month Instead of the Saturday Following the Third Friday

September 11, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 5, 2013, NYSE MKT LLC (''NYSE MKT'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend certain of its rules pertaining to the trading of options in order to change the expiration date for most option contracts to the third Friday of the expiration month instead of the Saturday following the third Friday. 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 amend certain of its rules pertaining to the trading of options in order to change the expiration date for most option contracts to the third Friday of the expiration month instead of the Saturday following the third Friday. This proposed rule change is based on a recent proposal of The Options Clearing Corporation (''OCC'') and is designed to conform the Exchange's rules to the changes implemented by the OCC.[3] As discussed in greater detail below, during a transition period that began on June 21, 2013, expiration processing will be conducted on Friday, although supplementary exercises could still be submitted prior to the Saturday expiration time. Saturday expirations will be eliminated for all option contracts expiring on or after February 1, 2015, with a limited exception for certain ''grandfathered'' contracts.

Most option contracts (''monthly expiration contracts'') currently expire at the ''expiration time'' (11:59 p.m. Eastern Time (''ET'')) on the *Saturday* following the third Friday of the specified expiration month (the ''expiration date'').[4] As a result of this proposed rule change, the expiration date for monthly expiration contracts would be changed to the third *Friday* of the expiration month. The expiration time would continue to be 11:59 p.m. ET on the expiration date. The proposed rule change would apply only to monthly expiration contracts expiring after February 1, 2015, and, in this regard, the Exchange does not propose to change the expiration date for any outstanding option contract.

The proposed rule change would apply only to series of option contracts opened for trading after the effective date of this proposed rule change and having expiration dates later than February 1, 2015. Option contracts having non-monthly expiration dates (''non-monthly expiration contracts'') would be unaffected by this proposed rule change except that flexibly structured (''FLEX'') options having expiration dates later than February 1, 2015 could not expire on a Saturday unless they are specified by the OCC as grandfathered. Non-monthly expiration contracts are discussed further below.

In order to provide a smooth transition to the proposed Friday expiration, the Exchange, together with other option exchanges and the OCC, began moving the expiration exercise procedures to Friday for all monthly expiration contracts on June 21, 2013, even though the contracts will continue to expire on Saturday. After February 1, 2015, virtually all monthly expiration contracts would actually expire on Friday. The only monthly expiration contracts that would expire on a Saturday after February 1, 2015 would be certain options that were listed prior to the effectiveness of the OCC's proposal, and a limited number of options that may be listed prior to necessary systems changes of the Exchange and the other options exchanges, which are expected to be completed in August 2013. The Exchange, along with other option exchanges, has agreed that, once these systems changes are made, it will not list any additional options with Saturday expiration dates falling after February 1, 2015.

Background

Saturday was established as the monthly expiration date for OCC-cleared options primarily in order to allow sufficient time for processing of option exercises, including correction of errors, while the markets were closed and positions remained fixed. However, improvements in technology and long experience have rendered Saturday expiration processing inefficient. Indeed, many non-monthly expiration contracts are currently traded with business day expiration dates. These

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[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 69772 (June 17, 2013), 78 FR 37645 (June 21, 2013) (SR–OCC–2013–04).

[4] *See, e.g.,* the definition of ''expiration time'' in Article I of the OCC By-Laws.

include FLEX options and quarterly, monthly, and weekly options. Expiration exercise processing for these non-monthly expiration contracts occurs on a more compressed timeframe and with somewhat different procedures than Saturday expiration processing for monthly expiration contracts.

It has been a long-term goal of OCC and its clearing members to move the expiration process for all monthly expiration contracts from Saturday to Friday night. Eliminating Saturday expirations will allow OCC to streamline the expiration process for all monthly expiration contracts and increase operational efficiencies for OCC and its clearing members. Furthermore, it will compress the operational timeframe for processing the options expirations such that clearing members will be required to reconcile options trades on the trade date, which will enhance intra-day risk management of cleared trades by the clearing member and promote real-time trade date reconciliation and position balancing by clearing members.

Industry groups, clearing members and the option exchanges have been active participants in planning for the transition to the Friday expiration. In March 2012, OCC began to discuss moving monthly expiration contracts to Friday expiration dates with industry groups, including two Securities Industry and Financial Markets Association (''SIFMA'') committees, the Operations and Technology Steering Committee and the Options Committee, and at two major industry conferences, the SIFMA Operations Conference and the Options Industry Conference. OCC also discussed the project with the Intermarket Surveillance Group and at an OCC Operations Roundtable. In each case, the initiative received broad support.

Friday expiration processing is also consistent with the long-standing rules and procedures of the options exchanges and the Financial Industry Regulatory Authority (''FINRA''), which generally provide that exercise decisions with respect to expiring monthly expiration contracts must be made by, and exercise instructions may not be accepted from customers after, 5:30 p.m. ET on the business day preceding expiration (usually Friday).[5] Brokerage firms may set earlier cutoff times for customers submitting exercise notices. Clearing members of OCC are permitted to submit exercise instructions after the cutoff time (''supplementary exercises'') only in case of errors or other unusual situations, and may be subject to fines or disciplinary actions.[6] The Exchange believes that the extended period between cutoff time and expiration of options is no longer necessary given modern technology.

Transition Period

Based on significant dialogue between the Exchange, other option exchanges, the OCC and its clearing members regarding the move to Friday expiration, the Exchange believes that the adoption of Friday expiration for monthly expiration contracts is best accomplished through an appropriate transition period, during which processing activity for all options, whether expiring on Friday or Saturday, has moved to Friday, followed by a change in the expiration day for new series of options. In May 2012, it was determined that Friday, June 21, 2013, would be an appropriate date on which to move expiration processing from Saturday to Friday night.

Accordingly, and based on the OCC's related proposal, beginning June 21, 2013, Friday expiration processing is in effect for all expiring monthly expiration contracts, regardless of whether the contract's actual expiration date is Friday or Saturday. However, for contracts having a Saturday expiration date, exercise requests received after Friday expiration processing is complete, but before the Saturday contract expiration time, will continue to be processed, without fines or penalties, so long as they are submitted in accordance with OCC's procedures governing such requests. After the transition period and the expiration of all existing Saturday-expiring options, expiration processing would be a single operational process and would run on Friday night for all monthly expiration contracts.

Friday Expiration Processing Schedule

Previously, expiration processing for monthly expiration contracts began on Saturday morning at 6:00 a.m. Central Time (''CT'') and was completed at approximately noon CT when margin and settlement reports are available. The window for submission of instructions in accordance with OCC's exercise-by-exception procedures under OCC Rule 805(d) was open from 6:00 a.m. to 9:00 a.m. CT on Saturday morning.[7] As proposed by OCC, the window for submission of exercise-by-exception instructions is now open from 6:00 p.m. to 9:15 p.m. CT on Friday evening.[8] Friday expiration processing for monthly expiration contracts therefore now begins at 6:00 p.m. CT on Friday evening and ends at approximately 2:00 a.m. CT on Saturday morning when margin and settlement reports would be available.[9]

Exercises for monthly expiration contracts with Saturday expirations must be allowed under the terms of the contracts. However, in order to accommodate the proposed new expiration schedule, the OCC also proposed to shorten the period of time in which clearing members may submit a supplementary exercise notice under OCC Rule 805(b). In addition, OCC amended Rule 801 to eliminate the ability of clearing members to revoke or modify exercise notices submitted to OCC. This change, along with the change in the processing timeline discussed above, more closely aligns OCC's expiration processing procedures with self-regulatory organization rules, including those of the Exchange, under which exchange members must submit exercise instructions by 5:30 p.m. ET on Friday and may not accept exercise instructions from customers after 5:30 p.m. ET on Friday. Accordingly, this change does not represent a departure from current practices for clearing members or their customers.

Grandfathering of Certain Options Series

Certain option contracts have already been listed on participant exchanges, including the Exchange, with Saturday expiration dates as distant as December 2016. Additionally, until participant exchanges, including the Exchange, complete certain systems enhancements in August 2013, it is possible that additional option contracts may be listed with Saturday expiration dates

[5] *See, e.g.,* FINRA Rule 2360(b)(23)(A)(iii), which provides that ''[o]ption holders have until 5:30 p.m. Eastern Time ('ET') on the business day immediately prior to the expiration date to make a final exercise decision to exercise or not exercise an expiring option. Members may not accept exercise instructions for customer or noncustomer accounts after 5:30 p.m. ET.''

[6] *See* OCC Rule 805(g).

[7] OCC's exercise-by-exception procedures are described in OCC Rule 805(d), which generally provides that each clearing member will automatically be deemed to have submitted an exercise notice immediately prior to the expiration time for all in-the-money option contracts unless the clearing member has instructed OCC otherwise in a written exercise notice.

[8] *See supra* note 4. The exercise-by-exception window for weekly and quarterly expiration options is from 6:00 p.m. to 7:00 p.m. CT.

[9] The new expiration schedule for Friday expiration processing is similar to the expiration schedule for weekly options, which begins at 6:00 p.m. CT on Friday evening and ends at 11:30 p.m. CT on Friday evening. All timeframes would be set forth in OCC's procedures and subject to change based on OCC's experience with Friday expiration processing.

beyond February 1, 2015. For these contracts, transitioning to a Friday expiration for newly-listed option contracts expiring after February 1, 2015 would create a situation under which certain option open interest would expire on a Saturday while other option open interest would expire on a Friday in the same expiration month. OCC clearing members have expressed a clear preference to not have a mix of option open interest in any particular month. Accordingly, the Exchange and other option exchanges have agreed not to permit the listing of, and OCC will not accept for clearance, any new option contracts with a Friday expiration if existing option contracts of the same series expire on the Saturday following the third Friday of the same month. However, Friday expiration processing will be in effect for these Saturday expiration contracts. As with monthly expiration contracts during the transition period, exercise requests received after Friday expiration processing is complete, but before the Saturday contract expiration time, will continue to be processed without fines or penalties.

Proposed Amendments to the Exchange's Rules

In order to implement the change to Friday expiration processing and eventual transition to Friday expiration for all monthly expiration contracts, the Exchange proposes to amend certain of its rules, as described below. The Exchange is also proposing, with this filing, to replace any historic reference in the purpose section of any past Exchange rule filings or previously released circulars, notices or bulletins to any expiration date other than Friday for a monthly expiration contract with the new Friday standard.

First, the Exchange proposes to amend Rule 903 (Series of Options Open for Trading) to differentiate between Friday and Saturday expirations. Specifically, the Exchange would specify that, on the business day of expiration (i.e., for Friday expirations), or, in the case of an option contract expiring on a day that is not a business day, and as is currently the case for Saturday expirations, on the business day prior to the expiration date of particular series of options, a closing rotation for such series shall commence. The Exchange also proposes to amend Commentary .04 to Rule 903 to specify that, due to unusual market conditions, the Exchange, in its discretion, may add new series of options on an individual stock or Exchange-Traded Fund Share until the close of trading on the business day prior to the business day of expiration (i.e., Thursday for a Friday expiration), or, in the case of an option contract expiring on a day that is not a business day, and as is currently the case for Saturday expirations, until the close of trading on the second business day prior to expiration (i.e., until the close of trading on Thursday for Saturday expirations).

Second, the Exchange proposes to amend Rule 909 (Other Restrictions on Exchange Option Transactions and Exercises) with respect to certain timing for restrictions on the exercise of option contracts. Specifically, the Exchange proposes to specify that the 10-business-day period referenced in Rule 909 includes the expiration date for an option contract that expires on a business day.

Third, the Exchange proposes to amend Rule 980 (Exercise of Option Contracts) in several areas, each of which is designed to differentiate between Friday and Saturday expirations. First, the Exchange proposes to specify in Rule 980(b) that special procedures apply to the exercise of equity options on the business day of their expiration (i.e., for Friday expirations), or, in the case of an option contract expiring on a day that is not a business day, and as is currently the case for Saturday expirations, on the last business day before their expiration. Second, the Exchange proposes to specify in Rule 980(c) that, regarding exercise cut-off times, option holders have until 5:30 p.m. ET on the business day of their expiration (i.e., for Friday expirations), or, in the case of an option contract expiring on a day that is not a business day, and as is currently the case for Saturday expirations, on the business day immediately prior to the expiration date. Third, the Exchange proposes to specify in Rule 980(g) that the advance notice described therein is applicable if provided by the Exchange on or before 5:30 p.m. ET on the business day (i.e., on Thursday) immediately prior to the business day of expiration (i.e., for Friday expirations), or, in the case of an option contract expiring on a day that is not a business day, and as is currently the case for Saturday expirations, the business day immediately prior to the last business day before the expiration date (i.e., Thursday for Saturday expirations). Fourth, the Exchange proposes to amend Commentary .03 of Rule 980 to specify that the reference therein to ''unusual circumstances'' includes, but is not limited to, a significant news announcement concerning the underlying security of an option contract that is scheduled to be released just after the close on the business day the option contract expires (i.e., for Friday expirations), or, in the case of an option contract expiring on a day that is not a business day, and as is currently the case for Saturday expirations, the business day immediately prior to expiration.

Fourth, the Exchange proposes to amend Rule 903C (Series of Stock Index Options) with respect to the permissible time for trading. Specifically, the Exchange proposes to specify in Rule 903C(c) that, on the business day a particular series of index options expires (i.e., for Friday expirations), or, in the case of an option contract expiring on a day that is not a business day, and as is currently the case for Saturday expirations, the business day prior to the expiration of a particular series of index options, such options shall freely trade until 4:00 p.m., unless the Board of Directors has established different hours of trading for certain index options. Additionally, the Exchange proposes to specify in Commentary .01 to Rule 903C that transactions in Major Market Index options may be effected on the Exchange until 4:15 p.m. each business day, including the business day the option contract expires (i.e., for Friday expirations), or, in the case of an option contract expiring on a day that is not a business day, and as is currently the case for Saturday expirations, the business day prior to expiration.

Fifth, the Exchange proposes to amend Rule 909C (Other Restrictions on Stock Option Transactions and Exercises) with respect to certain timing for restrictions on the exercise of option contracts. Specifically, the Exchange proposes to specify that all of the provisions of Rule 909 shall be applicable to stock index options, except that (a) any restriction on the exercise of a particular series of stock index options imposed by the Exchange may remain in effect until (but not including) the business day the option contract expires (i.e., for Friday expirations), or, in the case of an option contract expiring on a day that is not a business day, and as is currently the case for Saturday expirations, the business day prior to the expiration date of such series of options.

Sixth, the Exchange proposes to amend Rule 980C (Exercise of Stock Index Option Contracts) with respect to certain procedures related to the exercise of stock index option contracts. Specifically, the Exchange proposes to specify in Rule 980C(b) that the provisions of subparagraphs (i) and (ii) of paragraph (a) of Rule 980C are not applicable with respect to any series of stock index options on the business day

of their expiration (i.e., for Friday expirations), or, in the case of an option contract expiring on a day that is not a business day, and as is currently the case for Saturday expirations, on the business day prior to the expiration date of such series of options.[10]

Seventh, the Exchange proposes to amend Rule 900FRO (Applicability; Definitions) with respect to fixed return options (''FROs'') in order to differentiate between Friday and Saturday expirations with respect to the definitions of ''VWAP'' and ''Settlement Price.'' Specifically, the Exchange proposes to specify in Rule 900FRO(b)(4) that the denominator in the equation for determining Volume Weighted Average Price or ''VWAP'' is the total number of shares traded during the entire last day of trading on the business day of their expiration (i.e., for Friday expirations), or, in the case of an option contract expiring on a day that is not a business day, and as is currently the case for Saturday expirations, on the business day prior to expiration. Additionally, the Exchange proposes to specify in Rule 900FRO(b)(5) that the term ''settlement price'' means the ''all-day'' VWAP of the composite prices of the security underlying the FRO during regular trading hours on the business day of their expiration (i.e., for Friday expirations), or, in the case of an option contract expiring on a day that is not a business day, and as is currently the case for Saturday expirations, on the last trading day prior to expiration.

Eighth, the Exchange proposes to amend Rule 910FRO (Determination of the Settlement Price) to differentiate between Friday and Saturday expirations. Specifically, the Exchange proposes to specify in Rule 910FRO(a) that, for FROs based on individual stocks and Exchange-Traded Fund Shares, the Exchange will use the ''composite price'' VWAP during regular trading hours for the entire business day of their expiration (i.e., for Friday expirations), or, in the case of an option contract expiring on a day that is not a business day, and as is currently the case for Saturday expirations, the entire business day immediately preceding the expiration date as reported by industry price vendors.

Ninth, the Exchange proposes to amend Rule 958FRO (Maximum Bid-Ask Differentials) to differentiate between Friday and Saturday expirations. Specifically, the Exchange proposes to specify that a specialist or registered trader is expected to bid and offer so as to create differences of no more than $0.25 between the bid and the offer for each FRO contract except during the business day of their expiration (i.e., for Friday expirations), or, in the case of an option contract expiring on a day that is not a business day, and as is currently the case for Saturday expirations, during the business day prior to expiration, where the maximum permissible price differential for FROs may be $0.50.

Tenth, the Exchange proposes to amend Rule 952BIN (Maximum Bid-Ask Differentials) to differentiate between Friday and Saturday expirations. Specifically, the Exchange proposes to specify that a specialist or registered trader is expected to bid and offer so as to create differences of no more than 25% of the designated exercise settlement value between the bid and offer for each binary option contract or $5.00, whichever amount is wider, except during the business day of their expiration (i.e., for Friday expirations), or, in the case of an option contract expiring on a day that is not a business day, and as is currently the case for Saturday expirations, during the business day prior to the expiration, on which the maximum permissible price differential for binary options may be 50% of the designated exercise settlement value or $5.00, whichever amount is wider.

Eleventh, the Exchange proposes to amend Rule 900.2NY (Definitions) in order to amend the definition of ''Expiration Date.'' The proposed amendment would add text to differentiate between option contracts that expire on a non-business day, as is currently the case with monthly expiration contracts, and option contracts that expire on a business day, as would be the case under the proposed new timing of expiration (i.e., Friday instead of Saturday). The amended definition would include a reference to the February 1, 2015 transition date, after which virtually all monthly expiration contracts would actually expire on Friday (rather than, beginning June 21, 2013, only being processed on Friday). The amended definition would also include a reference to long-term option contracts expiring on or after February 1, 2015 that the OCC may designate as ''grandfathered,'' for which the expiration date would continue to be the Saturday immediately following the third Friday of the expiration month.

Twelfth, the Exchange proposes to amend Rule 953NY (Trading Halts and Suspensions) to differentiate between Friday and Saturday expirations. Specifically, the Exchange proposes to specify in Rule 953NY(d)(7) that, in the event that any of the events described in Rule 953NY(d)(1)—(6) should occur on the business day of expiration (i.e., for Friday expirations), or, in the case of an option contract expiring on a day that is not a business day, and as is currently the case for Saturday expirations, on the business day prior to expiration, it is the preference of the Exchange to allow trading to continue on that date.

Finally, the Exchange proposes to amend Rule 975NY (Obvious Errors and Catastrophic Errors) to add greater specificity regarding the timing surrounding notifying the Exchange of a ''Catastrophic Error.'' Specifically, the Exchange proposes to specify that, for such transactions in an expiring options series that take place on an expiration day that is a business day (i.e., for Friday expirations), an ATP Holder must notify the Exchange by 5:00 p.m. ET that same day. For such transactions in an options series that take place on the business day immediately prior to an expiration day that is not a business day (i.e., for Saturday expirations), an ATP Holder must notify the Exchange by 5:00 p.m. ET on such business day (i.e., on Friday).

The Exchange notes that the proposed rule change is not otherwise intended to address any other issues, and the Exchange is not aware of any problems that ATP Holders would have in complying with the proposed rule change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[11] in general, and Section 6(b)(5) of the Act,[12] in particular. The proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove

[10] Subparagraphs (i) of paragraph (a) of Rule 980C provides that a memorandum to exercise any American-style stock index option contract issued or to be issued in a customer, market maker or firm account at the OCC must be received or prepared by the member organization no later than five (5) minutes after the close of trading on that day and must be time stamped at the time it is received or prepared. Subparagraphs (ii) of paragraph (a) of Rule 980C provides that any member or member organization that intends to submit an exercise notice for 25 or more American-style stock index option contracts in the same series on the same business day on its own behalf or on behalf of an individual customer must deliver an ''exercise advice'' on a form prescribed by the Exchange to a place designated by the Exchange no later than five (5) minutes after the close of trading on that day.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes that implementing the change to Friday expiration processing and eventually transitioning to Friday expiration for all monthly expiration contracts would foster cooperation and coordination with persons engaged in facilitating transactions in securities. Specifically, and as noted above, it has been a long-term goal of OCC and its clearing members to move the expiration process for all monthly expiration contracts from Saturday to Friday night. Eliminating Saturday expirations would allow OCC to streamline the expiration process for all monthly expiration contracts and increase operational efficiencies for OCC and its clearing members.

The Exchange further believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system by compressing the operational timeframe for processing the options expirations, such that OCC clearing members would be required to reconcile options trades on the trade date, which would enhance intra-day risk management of cleared trades by the clearing member and promote real-time trade date reconciliation and position balancing by clearing members.

The Exchange further believes that the proposed rule change is consistent with the Act because the extended period between cutoff time and expiration of options is no longer necessary given modern technology. In this regard, and based on significant dialogue between the Exchange, other option exchanges, the OCC and its clearing members regarding the move to Friday expiration, the Exchange believes that the adoption of Friday expiration for monthly expiration contracts is best accomplished through an appropriate transition period during which processing activity for all options, whether expiring on Friday or Saturday, has moved to Friday, followed by a change in the expiration day for new series of options.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

In accordance with Section 6(b)(8) of the Act,[13] 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 proposed rule change is not designed to address any aspect of competition, whether between the Exchange and its competitors, or among market participants. Instead, the proposed rule change is designed to allow OCC to streamline the expiration process for all monthly expiration contracts and increase operational efficiencies for OCC and its clearing members. The proposed rule change also will allow OCC and its clearing members to reduce operational risk. Moreover, OCC has coordinated moving to a Friday night expiration process with options industry participants, including the Exchange, and has also obtained assurance from all such participants that they are able to adhere to OCC's Friday night expiration implementation schedule. Therefore, the Exchange does not believe the proposed rule change would 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 solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[14] and Rule 19b–4(f)(6) thereunder.[15] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[16]

A proposed rule change filed under Rule 19b–4(f)(6)[17] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[18] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission notes that waiver of the operative delay would permit the Exchange to implement the changes proposed herein immediately.

Under the proposal, the Exchange would amend certain of its rules pertaining to the trading of options in order to change the expiration date for most option contracts to the third Friday of the expiration month instead of the Saturday following the third Friday. The Exchange represents that a waiver of the 30-day operative delay is necessary and appropriate to not disrupt the industry scheduled listing of Long Term Equity Options Series (''LEAPS'') expiring in January 2016. Specifically, the Exchange notes that, pursuant to the Options Listing Procedures Plan (an approved national market system plan) and its Rule 903 Commentary .03(b), the Options Clearing Corporation and all national securities exchanges that trade options, including the Exchange, agreed on adding new LEAPS expiring in January 2016 on September 16, 2013, for those issues that are on the January expiration cycle. The Exchange further represents that this date was published in 2012 and has been relied upon across the industry.

Since the Exchange's Rule 900.2NY (26) currently defines ''expiration date'' as the ''Saturday immediately following the third Friday of the expiration month,'' the Exchange will not be able to list monthly option contracts expiring on any day other than a Saturday until this proposal becomes effective. As such, the Exchange represents that it will be at a significant competitive disadvantage, and it requests the waiver to facilitate and coordinate with the listing of the 2016 LEAPS on September 16, 2013. Additionally, the Exchange notes that no other provision of the proposal will have an immediate impact on market participants because no monthly options expiring in the next 30 days have a Friday expiration date. Based on the Exchange representations above, and since the proposal is based, in part, on a proposal submitted by the OCC and approved by the Commission,[19] the Commission waives the 30-day operative delay requirement

[13] 15 U.S.C. 78f(b)(8).

[14] 15 U.S.C. 78s(b)(3)(A)(iii).

[15] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] 17 CFR 240.19b–4(f)(6).

[18] 17 CFR 240.19b–4(f)(6)(iii).

[19] *See supra* note 4.

and designates the proposed rule change as operative upon filing.[20]

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)[21] of the Act to determine whether the proposed rule change should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2013–73 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–2013–73. 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 publicly available. All submissions should refer to File Number SR–NYSEMKT–2013–73 and should be submitted on or before October 8, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–22513 Filed 9–16–13; 8:45 am]

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[20] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[21] 15 U.S.C. 78s(b)(2)(B).

[22] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–70371; File No. SR–Phlx–2013–90]**

## Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Pricing Schedule

September 11, 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 August 29, 2013, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''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 proposes to amend the Exchange's Pricing Schedule with respect to certain pricing in Section II entitled ''Multiply Listed Options Fees''.[3] While changes to the Pricing Schedule pursuant to this proposal are effective upon filing, the Exchange has designated that they become operative on September 3, 2013.

The text of the proposed rule change is also available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change 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 proposed rule change is to amend the Exchange's Pricing Schedule with respect to certain pricing in Section II entitled ''Multiply Listed Options Fees'' by eliminating a certain fee and rebate for certain floor transactions.

Specifically, the Exchange proposes to eliminate certain pricing, established on May 1, 2013,[4] for Specialists[5] and Market Makers[6] that are contra to a Customer order in Penny Pilot Options on Exchange Traded-Fund (''ETFs'')[7] on the Exchange's floor by eliminating the $0.25 per contract fee that is in addition to the Floor Options Transaction Charges in Section II of the Pricing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The pricing in Section II includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed.

[4] *See* Securities Exchange Act Release No. 69548 (May 9, 2013) 78 FR 28681 (May 15, 2013) (SR–PHLX–2013–49).

[5] A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

[6] A Market Maker includes Registered Options Traders (Rule 1014(b)(i) and (ii)), which includes Streaming Quote Traders (*see* Rule 1014(b)(ii)(A)) and Remote Streaming Quote Traders (*see* Rule 1014(b)(ii)(B)). Directed Participants are also market makers.

[7] An ETF is an open-ended registered investment company under the Investment Company Act of 1940 that has received certain exemptive relief from the Commission to allow secondary market trading in the ETF shares. ETFs are generally index-based products, in that each ETF holds a portfolio of securities that is intended to provide investment results that, before fees and expenses, generally correspond to the price and yield performance of the underlying benchmark index.

Schedule.[8] Additionally, the contra Customer order to the Specialist and Market Maker transaction, established on May 1, 2013,[9] no longer will be entitled to a rebate of $0.25 per contract. The Exchange believes that the existing pricing structure did not provide any material benefit to Specialists, Market Makers, Customers or to the Exchange and that this new pricing will not impact trading in Penny Pilot Options on ETFs on the Exchange's trading floor.

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act [10] in general, and furthers the objectives of Section 6(b)(4) of the Act [11] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange believes it is reasonable to eliminate certain pricing for Specialists and Market Makers that are contra to a Customer Penny Pilot Options on ETFs transacted on the Exchange's floor by eliminating the $0.25 per contract fee that is in addition to the Options Transaction Charges [12] in Section II of the Pricing Schedule is reasonable because the Exchange has determined that the fee did not encourage more orders in Penny Pilot Options on ETFs to be delivered and executed on the Exchange's trading floor and did not provide any material additional opportunity for floor participants to interact with that order. The Exchange also proposes to eliminate this since the Exchange also seeks to eliminate the rebate to the Customer on the contra-side of a Specialist and Market Maker floor transaction in a Penny Pilot Option on an ETF. The Exchange determined that paying a rebate of $0.25 per contract to Customers on the contra-side of a Specialist and Market Maker Penny Pilot Options on an ETF order did not encourage market participants to send Customer Penny Pilot Options on ETFs to the Exchange's floor for execution to qualify for the rebate when they are contra to a Specialist or Market Maker order.

The Exchange's proposal to eliminate certain pricing for Specialists and Market Makers that are contra to a Customer Penny Pilot Options on ETFs transacted on the Exchange's trading floor by eliminating the $0.25 per contract in addition to the Options Transaction Charges[13] in Section II of the Pricing Schedule is equitable and not unfairly discriminatory because it applies to all Specialists and Market Makers equally and uniformly.

The Exchange's proposal to eliminate the $0.25 per contract rebate to a Customer that is contra to a Specialist or Market Maker order in a Penny Pilot Options on an ETF transacted on the Exchange's trading floor is reasonable because although Customer order flow is unique and such order flow may attract liquidity to the market to the benefit of all market participants, the rebate at hand did not attract additional liquidity and thus no additional benefit to market participants. The Exchange will uniformly eliminate for all Customers the $0.25 per contract rebate for orders that are contra to a Specialist or Market Maker order in Penny Pilot Options on ETFs transacted on the Exchange's trading floor so it is equitable and not unfairly discriminatory because it applies to all Customers.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The 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 these pricing amendments do not impose a burden on competition but rather that the proposed rule change will continue to promote competition on the Exchange and position the Exchange as an attractive alternative when compared to other options exchanges.

The Exchange operates in a highly competitive market, comprised of eleven [sic] exchanges, in which market participants can easily and readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or rebates to be inadequate. Accordingly, the fees that are assessed and the rebates paid by the Exchange described in the above proposal are influenced by these robust market forces and therefore must remain competitive with fees charged and rebates paid by other venues and therefore must continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than competing venues.

*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.[14] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. 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–Phlx–2013–90 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–Phlx–2013–90. 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

[8] Specialists and Market Makers are assessed a Floor Options Transaction Charge of $0.25 per contract. *See* Section II of the Pricing Schedule.

[9] *See supra* note 4.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

[12] Specialists and Market Makers are assessed an Options Transaction Charge of $0.25 per contract for transacting floor trading ETFs in Penny Pilot Options. *See* Section II of the Pricing Schedule. The Exchange does not assess Payment for Order Flow fees for floor transactions. *See* Section II of the Pricing Schedule.

[13] Specialists and Market Makers are assessed an Options Transaction Charge of $0.25 per contract for transacting Floor ETFs in Penny Pilot Options. *See* Section II of the Pricing Schedule. The Exchange does not assess Payment for Order Flow fees for floor transactions. *See* Section II of the Pricing Schedule.

[14] 15 U.S.C. 78s(b)(3)(A)(ii).

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–Phlx–2013–90 and should be submitted on or before October 8, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–22511 Filed 9–16–13; 8:45 am]

**BILLING CODE 8011–01–P**

[15] 17 CFR 200.30–3(a)(12).

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

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

**ACTION:** Monthly Notice of PFC Approvals and Disapprovals. In January 2013, there were four applications approved. Additionally, five approved amendments to previously approved applications are listed.

**SUMMARY:** The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph d of § 158.29.

**PFC Applications Approved**

*Public Agency:* Port of Pasco, Pasco, Washington.

*Application Number:* 13–09–C–00–PSC.

*Application Type:* Impose and use a PFC.

*PFC Level:* $4.50.

*Total PFC Revenue Approved in This Decision:* $7,140,000.

*Earliest Charge Effective Date:* April 1, 2022.

*Estimated Charge Expiration Date:* October 1, 2027.

*Class of Air Carriers Not Required To Collect PFC's:* None.

*Brief Description of Projects Approved for Collection and Use:*

Rehabilitate taxiway D—design.
Install/relocate VHF Omnidirectional Range (VOR)—design.
PFC administration fees.

*Brief Description of Project Approved for Collection:*

Expand terminal building.

*Decision Date:* January 2, 2013.

**FOR FURTHER INFORMATION CONTACT:** Trang Tran, Seattle Airports District Office, (425) 227–1662.

*Public Agency:* City of Fayetteville, North Carolina.

*Application Number:* 13–05–C–00–FAY.

*Application Type:* Impose and use a PFC.

*PFC Level:* $4.00.

*Total PFC Revenue Approved in This Decision:* $1,575,744.

*Earliest Charge Effective Date:* March 1, 2013.

*Estimated Charge Expiration Date:* June 1, 2013.

*Class of Air Carriers Not Required To Collect PFC's:* None.

*Brief Description of Projects Approved for Collection and Use:*

Replace B4 jetbridge.
Taxiway A rehabilitation—design.
Construct taxiway A rehabilitation.
Rehabilitate air carrier apron phase II—design.
Air carrier apron rehabilitation phase I construction.
Runway 4 runway safety area improvements—design.
Taxiway A extension—design.
Runway 4 runway safety area improvements—construction.
Taxiway A extension—construction.
Paved shoulders—design.
FAA reimbursable agreement Medium Intensity Approach Lighting System with Runway Alignment (MALSR) modification.
Design and construct wildlife/security fencing.

*Brief Description of Disapproved Projects:*

Air carrier apron rehabilitation II—construction.
Runway 4/22 paved shoulders—construction.
Avigation easement acquisition, runway 4 runway protection zone.

*Determination:* Disapproved. Projects do not meet the requirements of § 158.33(e). General aviation auto parking (non-revenue).

*Determination:* Disapproved. Project does not meet the requirements of § 158.15(b).

*Decision Date:* January 3, 2013.

**FOR FURTHER INFORMATION CONTACT:** Robert Rau, Atlanta Airports District Office, (404) 305–7004.

*Public Agency:* Springfield Airport Authority, Springfield, Illinois.

*Application Number:* 13–13–C–00–SPI.

*Application Type:* Impose and use a PFC.

*PFC Level:* $4.50.

*Total PFC Revenue Approved in This Decision:* $1,312,713.

*Earliest Charge Effective Date:* July 1, 2016.

*Estimated Charge Expiration Date:* July 1, 2021.

*Class of Air Carriers Not Required To Collect PFC's:* On-demand air taxis.

*Determination:* Approved. Based on information submitted in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Abraham Lincoln Capital Airport.

*Brief Description of Projects Approved for Collection and Use:*

Acquire land for approach protection—White property.
Acquire land for airport development—Spencer property.
Acquire land for approach protection—Sosman property.
Acquire land for approach protection—Hastie property.
Acquire land for airport development—Turley property.
Acquire aircraft rescue and firefighting twin agent extinguishing skid unit and equipment.
Acquire snow removal equipment—runway plow truck, chemical spreader, front end loader, plow truck, and skidsteer tractor with front loader.
Extend taxiway Y—design and construct.
Modify and realign east perimeter road—design and construct.
Widen, reconfigure, and rehabilitate taxiway B—design and construct.
Modify and realign south perimeter road—design and construct.
Rehabilitate t-hangar taxiways.

Construct and design snow removal equipment building—phase 3.
Widen, reconfigure, and rehabilitate taxiway B—design and construct, phase 2.
Conduct preliminary study—federal inspection station.
Flight information display and emergency information notification system and public address system upgrades for passenger terminal.

*Decision Date:* January 10, 2013.

**FOR FURTHER INFORMATION CONTACT:** Chad Oliver, Chicago Airports District Office, (847) 294–7199.

*Public Agency:* City of Duluth, Minnesota.

*Applications Number:* 13–11–C–00–DLH.

*Application Type:* Impose and use a PFC.

*PFC Level:* $4.50.

*Total PFC Revenue Approved in This Decision:* $1,011,096.

*Earliest Charge Effective Date:* February 1, 2019.

*Estimated Charge Expiration Date:* October 1, 2020.

*Class of Air Carriers Not Required To Collect PFC's:* Non-scheduled air taxi/commercial operators.

*Determination:* Approved. Based on information submitted in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Duluth International Airport.

*Brief Description of Projects Approved for Collection and Use:*

Preparation of PFC 11 notice of intent and PFC 10 amendment.
Construct passenger terminal replacement: geothermal and gate electrification.
Construct passenger terminal replacement: overhead skywalk.

*Decision Date:* January 16, 2013.

**FOR FURTHER INFORMATION CONTACT:** Gordon Nelson, Minneapolis Airports District Office, (612) 253–4633.

AMENDMENTS TO PFC APPROVALS

| Amendment No., City, State | Amendment approved date | Original approved net PFC revenue | Amended approved net PFC revenue | Original estimated charge exp. date | Amended estimated charge exp. date |
|---|---|---|---|---|---|
| 11–10–C–01–DLH, Duluth, MN | 01/07/13 | $1,639,571 | $4,270,190 | 11/01/14 | 02/01/19 |
| 09–07–C–03–GRK, Killeen, TX | 01/09/13 | 3,125,711 | 3,122,284 | 04/01/13 | 04/01/13 |
| 09–13–C–02–MCO, Orlando, FL | 01/18/13 | 227,788,000 | 227,788,000 | 10/01/25 | 10/01/25 |
| 11–14–C–01–MCO, Orlando, FL | 01/18/13 | 26,952,400 | 28,452,400 | 06/01/26 | 06/01/26 |
| 09–09–C–02–EAT, Wenatchee, WA | 01/23/13 | 104,916 | 102,027 | 04/01/10 | 04/01/10 |

Issued in Washington, DC, on September 4, 2013.

**Joe Hebert,**

*Manager, Financial Analysis and Passenger Facility Charge Branch.*

[FR Doc. 2013–22564 Filed 9–16–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

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

**ACTION:** Monthly Notice of PFC Approvals and Disapprovals. In February 2013, there were eight applications approved. Additionally, nine approved amendments to previously approved applications are listed.

**SUMMARY:** The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

**PFC Applications Approved**

*Public Agency:* Palm Beach County Department of Airports, West Palm Beach, Florida.

*Application Number:* 13–13–C–00–PBI.

*Application Type:* Impose and use a PFC.

*PFC Level:* $4.50.

*Total PFC Revenue Approved in This Decision:* $27,589,524.

*Earliest Charge Effective Date:* November 1, 2013.

*Estimated Charge Expiration Date:* October 1, 2016.

*Class of Air Carriers Not Required To Collect PFC'S:*

Air taxi/commercial operators filing FAA Form 1800–31 and operating at Palm Beach International Airport (PBI).

*Determination:* Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at PBI.

*Brief Description of Projects Approved for Collection at PBI and USE at PBI at a $4.50 PFC Level:*

Air cargo apron expansion and rehabilitation.
Runway 10R/28L rehabilitation.
Taxiways B, D, and E rehabilitation.
Terminal apron and taxilanes rehabilitation.

*Brief Description of Projects Approved for Collection at PBI and Use at PBI at a $3.00 PFC Level:*

Terminal improvements—restroom expansion and modifications.
Emergency crash phone system upgrades.
PFC implementation and administrative costs.

*Brief Description of Projects Approved for Collection at PBI and Use at Palm Beach County Glades Airport at a $3.00 PFC Level:*

Apron rehabilitation.
Airfield lighting upgrades and improvements.

*Brief Description of Project Approved for Collection at PBI and Use at North Palm Beach General Aviation Airport at a $3.00 PFC Level:*

Construct apron, taxiway, and infrastructure.

*Brief Description of Project Approved for Collection at PBI and Use at Palm Beach County Park at a $3.00 PFC Level:*

Southside pavement rehabilitation and infrastructure improvements—phase I.

*Brief Description of Project Partially Approved for Collection at PBI and Use at PBI at a $3.00 PFC Level:*

Construct Golfview infrastructure—phase I.

*Determination:* Partially approved. The access road work element was

disapproved. The public agency did not provide sufficient information to me the PFC objective and adequate justification requirements for this work item.

*Decision Date:* February 4, 2013.

**FOR FURTHER INFORMATION CONTACT:** Susan Moore, Orlando Airports District Office, (407) 812–6331.

*Public Agency:* County of Washington, Hagerstown, Maryland.

*Application Number:* 13–04–C–00–HGR.

*Application Type:* Impose and use a PFC.

*PFC Level:* $4.50.

*Total PFC Revenue Approved in This Decision:* $12,298.

*Earliest Charge Effective Date:* April 1, 2013.

*Estimated Charge Expiration Date:* April 1, 2013.

*Class of Air Carriers Not Required To Collect PFC's:* None.

*Brief Description of Project Approved for Collection and Use:* Taxiway marking.

*Decision Date:* February 6, 2013.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Breeden, Washington Airports District Office, (703) 661–1363.

*Public Agency:* Kansas City Aviation Department, Kansas City, Missouri.

*Application Number:* 13–08–C–00–MCI.

*Application Type:* Impose and use a PFC.

*PFC Level:* $3.00.

*Total PFC Revenue Approved in This Decision:* $19,850,812.

*Earliest Charge Effective Date:* April 1, 2018.

*Estimated Charge Expiration Date:* June 1, 2019.

*Class of Air Carriers Not Required To Collect PFC's:* Air taxi/commercial operators filing FAA Form 1800–31.

*Determination:* Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Kansas City International Airport (MCI).

*Brief Description of Projects Approved for Collection at MCI and Use at MCI:*

Airfield pavement rehabilitation phase II.
New terminal advance planning.
Reconstruct airfield service roads.
Aircraft rescue and firefighting vehicles.
Terminal access roads rehabilitation and improvements.
New snow removal equipment.

*Brief Description of Project Approved for Collection at MCI and Use at Charles B. Wheeler Downtown Airport:*

Taxiway rehabilitations.

*Decision Date:* February 7, 2013.

**FOR FURTHER INFORMATION CONTACT:** Sheila Bridges, Central Region Airports Division, (816) 329–2638.

*Public Agency:* City of Williston, North Dakota.

*Application Number:* 13–01–C–00–ISN.

*Application Type:* Impose and use a PFC.

*PFC Level:* $4.50.

*Total PFC Revenue Approved in This Decision:* $2,825,713.

*Earliest Charge Effective Date:* April 1, 2013.

*Estimated Charge Expiration Date:* February 1, 2026.

*Class of Air Carriers Not Required To Collect PFC's:* None.

*Brief Description of Projects Approved for Collection and Use:*

Acquire aircraft rescue and firefighting vehicle.
Construct terminal apron.
Conduct environmental study (incompatible land in runway protection zone).
Acquire snow removal equipment (front end loader with attachments).
Construct snow removal equipment building.
Rehabilitate terminal apron.
Expand terminal area auto parking.
Construct passenger terminal.
Rehabilitate runway 2/20.
Rehabilitate taxiway B.
Construct taxiway D.
Conduct environmental study (obstruction removal).
Rehabilitate runway 11/29.
Acquire an aircraft rescue and firefighting vehicle.
Acquire snow removal equipment (2 snow plows).
Acquire snow removal equipment (sweeper).
Preparation of PFC application 1.

*Decision Date:* February 15, 2013.

**FOR FURTHER INFORMATION CONTACT:** Mark Holzer, Bismarck Airports District Office, (701) 323–7390.

*Public Agency:* Lancaster Airport Authority, Lancaster, Pennsylvania.

*Application Number:* 13–03–C–00-Lns.

*Application Type:* Impose and Use a PFC.

*PFC Level:* $3.00.

*Total PFC Revenue Approved in This Decision:* $35,917.

*Earliest Charge Effective Date:* July 1, 2013.

*Estimated Charge Expiration Date:* May 1, 2015.

*Class of Air Carriers Not Required To Collect PFC's:* None.

*Brief Description of Projects Approved for Collection and Use:*

Expand southeast general aviation apron, rehabilitate.
Install perimeter fence.

*Decision Date:* February 15, 2013.

**FOR FURTHER INFORMATION CONTACT:** Lori Ledebohm, Harrisburg Airports District Office, (717) 730–2835.

*Public Agency:* City of Albany, Georgia.

*Application Number:* 13–06–C–00–Aby.

*Application Type:* Impose and Use a PFC.

*PFC Level:* $4.50.

*Total PFC Revenue Approved in This Decision*: $334,032.

*Earliest Charge Effective Date:* April 1, 2013.

*Estimated Charge Expiration Date:* February 1, 2015.

*Class of Air Carriers Not Required To Collect PFC's:*

Air taxi/commercial operators filing FAA Form 1800–31 and operating at Southwest Georgia Regional Airport (ABY).

*Determination:* Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at ABY.

*Brief Description of Projects Approved for Collection and Use:*

Acquire aircraft rescue and firefighting vehicle.
Aircraft rescue and firefighting self-contained breathing apparatus.
Aircraft rescue and firefighting proximity suits.
800 MHz safety radios.
Widen and strengthen taxiway A phase I.
Widen and strengthen taxiway A phase II.
Master plan update.

*Decision Date:* February 21, 2013.

**FOR FURTHER INFORMATION CONTACT:** Robert Rau, Atlanta Airports District Office, (404) 305–7004.

*Public Agency:* Port of Portland, Portland, Oregon.

*Application Number:* 13–12–C–00–PDX.

*Application Type:* Impose and use a PFC.

*PFC Level:* $4.50.

*Total PFC Revenue Approved in This Decision:* $49,615,300.

*Earliest Charge Effective Date:* September 1, 2033.

*Estimated Charge Expiration Date:* November 1, 2034.

*Classes of Air Carriers Not Required To Collect PFC'S:*

(1) Nonscheduled/on-demand air carriers that enplane less than 2,500 passengers per year; and (2) commuters or small certificated air carriers that enplane less than 2,500 passengers per year.

*Determination:* Approved. Based on information contained in the public agency's application, the FAA has determined that each approved class accounts for less than 1 percent of the total annual enplanements at Portland International Airport.

*Brief Description of Projects Approved for Collection and Use at a $4.50 PFC Level:*

Taxiway C east reconstruction.
Taxiway C west reconstruction.

*Brief Description of Projects Approved for Collection and Use at a $3.00 PFC Level:*

Taxiway E south rehabilitation.
Taxiway F south rehabilitation.
Common-use gate improvements—phase II.

*Decision Date:* February 21, 2013.

**FOR FURTHER INFORMATION CONTACT:** Trang Tran, Seattle Airports District office, (425) 227–2660.

*Public Agency:* County of Natrona Board of Trustees, Casper, Wyoming.

*Application Number:* 13–08–C–00–Cpr.

*Application Type:* Impose and Use a PFC.

*PFC Level:* $3.00.

*Total PFC Revenue Approved in This Decision:* $1,308,333.

*Earliest Charge Effective Date:* January 1, 2014.

*Estimated Charge Expiration Date:* May 1, 2019.

*Class of Air Carriers Not Required To Collect PFC's:* None.

*Brief Description of Projects Approved for Collection and Use:*

Acquire snow plow and spreader.
Acquire snow blower.
Rehabilitate taxiway A.
Rehabilitate taxiway C.

*Decision Date:* February 21, 2013.

**FOR FURTHER INFORMATION CONTACT:** Jesse Lyman, Denver Airports District office, (303) 342–1262.

AMENDMENTS TO PFC APPROVALS

| Amendment No., City, State | Amendment approved date | Original approved net PFC revenue | Amended approved net PFC revenue | Original estimated charge exp. date | Amended estimated charge exp. date |
|---|---|---|---|---|---|
| 08–09–C–02–STL, Saint Louis, MO | 2/07/13 | $755,733,688 | $758,497,059 | 02/01/22 | 10/01/26 |
| 07–05–C–02–JAN, Jackson, MS | 2/12/13 | 25,473,400 | 23,306,174 | 07/01/16 | 09/01/15 |
| 09–06–C–01–SJU, San Juan, PR | 2/14/13 | 19,713,152 | 0 | 01/01/32 | 06/01/30 |
| 04–06–C–01–HDN, Hayden, CO | 2/20/13 | 1,051,507 | 956,050 | 07/01/08 | 11/01/07 |
| 08–02–C–02–ELM, Elmira, NY | 2/22/13 | 633,413 | 675,160 | 03/01/10 | 03/01/10 |
| 09–03–C–02–ELM, Elmira, NY | 2/22/13 | 2,580,175 | 2,606,608 | 10/01/15 | 08/01/15 |
| 09–03–C–03–ELM, Elmira, NY | 2/22/13 | 2,606,608 | 2,606,608 | 08/01/15 | 08/01/15 |
| 11–04–C–01–ELM, Elmira, NY | 2/22/13 | 2,635,941 | 2,550,995 | 12/01/20 | 06/01/19 |
| 11–04–C–02–ELM, Elmira, NY | 2/22/13 | 2,550,995 | 2,550,995 | 06/01/19 | 06/01/19 |

Issued in Washington, DC on September 4, 2013.

**Joe Hebert,**

*Manager, Financial Analysis and Passenger Facility Charge Branch.*

[FR Doc. 2013–22565 Filed 9–16–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

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

**ACTION:** Monthly Notice of PFC Approvals and Disapprovals. In October 2012, there were seven applications approved. This notice also includes information on four applications, one approved in July 2012 and the other three approved in September 2012, inadvertently left off the July 2012 and September 2012 notices, respectively. Additionally, seven approved amendments to previously approved applications are listed.

**SUMMARY:** The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph d of § 158.29.

**PFC Applications Approved**

PUBLIC AGENCY: Sanford Airport Authority, Sanford, Florida.

APPLICATION NUMBER: 12–03–C–00–SFB.

APPLICATION TYPE: Impose and use a PFC.

PFC LEVEL: $4.00.

TOTAL PFC REVENUE APPROVED IN THIS DECISION: $29,837,167.

EARLIEST CHARGE EFFECTIVE DATE: December 1, 2012.

ESTIMATED CHARGE EXPIRATION DATE: November 1, 2022.

CLASS OF AIR CARRIERS NOT REQUIRED TO COLLECT PFC'S: None.

BRIEF DESCRIPTION OF PROJECTS APPROVED FOR COLLECTION AND USE:

Reconstruction of taxiways L, R, C, and B4.
Rehabilitate apron (international ramp).
Acquire land for noise compatibility phase II.
Acquire aircraft rescue and firefighting vehicles.
Taxiway B extension.
Miscellaneous runway lighting and signage improvements.
Rehabilitate terminal building roof.
Construct apron—north side ramp.
Reconstruction of runway 9C/27C.
Expand apron—east terminal ramp.
Acquire land for noise compatibility.
Extend runway 9R/27L (land acquisition).
Extend runway 9R/27L (construction).
Expand apron phase II.
Acquire land for noise mitigation (phase 4).
Rehabilitate runway 9L/27R.
Extend runway 9R/27L (land acquisition—phase II).
PFC administration costs reimbursement.
Add/replace/reconfigure/extend baggage handling systems.
Replace 12 passenger boarding bridges.

DECISION DATE: July 12, 2012.

**FOR FURTHER INFORMATION CONTACT:** Susan Moore, Orlando Airports District Office, (407) 812–6331.

PUBLIC AGENCY: Hillsborough County Aviation Authority, Tampa, Florida.

APPLICATION NUMBER: 12–09–C–00–TPA.

APPLICATION TYPE: Impose and use a PFC.

PFC LEVEL: $4.50.

TOTAL PFC REVENUE APPROVED IN THIS DECISION: $33,030,276.

EARLIEST CHARGE EFFECTIVE DATE: January 1, 2019.

ESTIMATED CHARGE EXPIRATION DATE: November 1, 2019.

CLASS OF AIR CARRIERS NOT REQUIRED TO COLLECT PFC'S:

Air taxi/commercial operators filing FAA Form 1800–31 and operating at Tampa International Airport (TPA).

DETERMINATION: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at TPA.

BRIEF DESCRIPTION OF PROJECTS APPROVED FOR COLLECTION AND USE AT A $3.00 PFC LEVEL:

Airside F boarding bridges.

PFC implementation and administration costs.

BRIEF DESCRIPTION OF PROJECT PARTIALLY APPROVED FOR COLLECTION AND USE AT A $4.50 PFC LEVEL:

Airside F additions and renovations.

DETERMINATION: The following elements were determined not to meet the requirements of § 158.15 and, thus, were disapproved: Aircraft ''self-docking'' system; parking lot re-striping, landscaping, and artwork; build-out of the concession areas and tenant support office areas; relocation of the airline lounge; service elevator; and Wi-Fi system upgrade.

BRIEF DESCRIPTION OF PROJECT PARTIALLY APPROVED FOR COLLECTION AND USE AT A $3.00 PFC LEVEL:

Replace main terminal cooling tower.

DETERMINATION: The redevelopment of the existing cooling tower footprint into a covered parking and charging area for electric maintenance vehicles does not meet the requirements of § 158.15 and, thus, is not approved.

DECISION DATE: September 26, 2012.

**FOR FURTHER INFORMATION CONTACT:** Susan Moore, Orlando Airports District Office, (407) 812–6331.

PUBLIC AGENCY: Salt Lake City Corporation, Salt Lake City, Utah.

APPLICATION NUMBER: 12–13–C–00–SLC.

APPLICATION TYPE: Impose and use a PFC.

PFC LEVEL: $4.50.

TOTAL PFC REVENUE APPROVED IN THIS DECISION: $115,628,000.

EARLIEST CHARGE EFFECTIVE DATE: April 1, 2013.

ESTIMATED CHARGE EXPIRATION DATE: April 1, 2016.

CLASS OF AIR CARRIERS NOT REQUIRED TO COLLECT PFC'S:

Air taxi/commercial operators filing or required to file FAA Form 1800–31 and operating at Salt Lake City International Airport (SLC).

DETERMINATION: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at SLC.

BRIEF DESCRIPTION OF PROJECTS APPROVED FOR COLLECTION AND USE AT A $4.50 PFC LEVEL:

End of runway deicing program—phase 1, runway 34R.

Taxiway S pavement reconstruction.

Replace carousel 9 and oversized bag belt TU3.

Terminal redevelopment program—design and associated technical professional services.

BRIEF DESCRIPTION OF PROJECTS APPROVED FOR COLLECTION AND USE AT A $3.00 PFC LEVEL:

Apron mast lighting replacement.

Apron reconstruction—east of spots 3 and 4.

DECISION DATE: September 26, 2012.

**FOR FURTHER INFORMATION CONTACT:** Jesse Lyman, Denver Airports District Office, (303) 342–1262.

PUBLIC AGENCY: Salt Lake City Corporation, Salt Lake City, Utah.

APPLICATION NUMBER: 12–14–I–00–SLC.

APPLICATION TYPE: Impose a PFC.

PFC LEVEL: $4.50.

TOTAL PFC REVENUE APPROVED IN THIS DECISION: $281,119,000.

EARLIEST CHARGE EFFECTIVE DATE: April 1, 2016.

ESTIMATED CHARGE EXPIRATION DATE: September 1, 2022.

CLASS OF AIR CARRIERS NOT REQUIRED TO COLLECT PFC'S:

Air taxi/commercial operators filing or required to file FAA Form 1800–31 and operating at SLC.

DETERMINATION: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at SLC.

BRIEF DESCRIPTION OF PROJECT APPROVED FOR COLLECTION AT A $4.50 PFC LEVEL:

Terminal redevelopment program—consolidated terminal building.

DECISION DATE: September 26, 2012.

**FOR FURTHER INFORMATION CONTACT:** Jesse Lyman, Denver Airports District Office, (303) 342–1262.

PUBLIC AGENCY: County of Chemung, Elmira, New York.

APPLICATION NUMBER: 12–05–C–00–ELM.

APPLICATION TYPE: Impose and use a PFC.

PFC LEVEL: $4.50.

TOTAL PFC REVENUE APPROVED IN THIS DECISION: $77,241.

EARLIEST CHARGE EFFECTIVE DATE: December 1, 2020.

ESTIMATED CHARGE EXPIRATION DATE: February 1, 2021.

CLASS OF AIR CARRIERS NOT REQUIRED TO COLLECT PFC'S:

Nonscheduled/on-demand air carriers filing FAA Form 1800–31.

DETERMINATION: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Elmira Corning Regional Airport.

BRIEF DESCRIPTION OF PROJECTS APPROVED FOR COLLECTION AND USE:

PFC program administration.

Design taxiways A, L and B.

BRIEF DESCRIPTION OF PROJECT APPROVED FOR COLLECTION:

Acquire aircraft rescue and firefighting truck.

BRIEF DESCRIPTION OF DISAPPROVED PROJECT:

Acquire multipurpose snow removal equipment.

DETERMINATION: Project does not meet the requirements of § 158.15(b).

DECISION DATE: October 5, 2012.

**FOR FURTHER INFORMATION CONTACT:** Patricia Henn, Eastern Region Airports Division, (718) 553–3357.

PUBLIC AGENCY: City of Killeen, Texas.

APPLICATION NUMBER: 13–08–C–00–GRK.

APPLICATION TYPE: Impose and use a PFC.

PFC LEVEL: $4.50.

TOTAL PFC REVENUE APPROVED IN THIS DECISION: $1,334,519.

EARLIEST CHARGE EFFECTIVE DATE: April 1, 2013.

ESTIMATED CHARGE EXPIRATION DATE: March 1, 2015.

CLASS OF AIR CARRIERS NOT REQUIRED TO COLLECT PFC'S:

Part 135 charter operators.

DETERMINATION: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Killeen/Fort Hood, Robert Gray Airport.

BRIEF DESCRIPTION OF PROJECTS APPROVED FOR COLLECTION AND USE:

Terminal hold rooms and common use space rehabilitation.

Rehabilitate taxiways (B, B–3, C, D, and E).

Terminal hold room and common use area passenger accommodation.

Rehabilitate terminal access road.

Administration fees.

DECISION DATE: October 18, 2012.

**FOR FURTHER INFORMATION CONTACT:** Steven Cooks, Texas Airports Development Office, (817) 222–5608.

PUBLIC AGENCY: City of Fort Smith, Arkansas.

APPLICATION NUMBER: 12–05–C–00–FSM.

APPLICATION TYPE: Impose and use a PFC.

PFC LEVEL: $4.50.

TOTAL PFC REVENUE APPROVED IN THIS DECISION: $2,412,537.

EARLIEST CHARGE EFFECTIVE DATE: January 1, 2013.

ESTIMATED CHARGE EXPIRATION DATE: December 1, 2019.

CLASSES OF AIR CARRIERS NOT REQUIRED TO COLLECT PFC'S:

(1) Air taxi/commercial operators filing FAA Form 1800–31; and (2) commuter air carriers enplaning non-scheduled passengers filing Department of Transportation Form 41, Schedule T–100.

DETERMINATION: Approved. Based on information contained in the public agency's application, the FAA has determined that each approved class accounts for less than 1 percent of the total annual enplanements at Fort Smith Regional Airport.

BRIEF DESCRIPTION OF PROJECTS APPROVED FOR COLLECTION AND USE:

Airport entry signs to passenger terminal.

Passenger terminal sterile lobby expansion.

Portable pre-conditioned air and ground power unit.

Runway 1/19 pavement rehabilitation and marking.

Perimeter security fence and erosion control.

Runway closure signs.

Wildlife habitat mitigation and drainage improvements.

Wildlife management plan.

Security system upgrade.

Braking action testing equipment.

Replace security vehicles.

Public information systems.

Snow removal equipment.

Reconstruction of taxiway A west phase 2.

Reconstruction of taxiway A west phase 3.

PFC administration.

DECISION DATE: October 22, 2012.

**FOR FURTHER INFORMATION CONTACT:** Julieann Dwyer, Arkansas/Oklahoma Airports Development Office, (817) 222–5636.

PUBLIC AGENCY: Des Moines Airport Authority, Des Moines, Iowa.

APPLICATION NUMBER: 12–13–C–00–DSM.

APPLICATION TYPE: Impose and use a PFC.

PFC LEVEL: $4.50.

TOTAL PFC REVENUE APPROVED IN THIS DECISION: $3,059,891.

EARLIEST CHARGE EFFECTIVE DATE: October 1, 2019.

ESTIMATED CHARGE EXPIRATION DATE: December 1, 2020.

CLASS OF AIR CARRIERS NOT REQUIRED TO COLLECT PFC'S: Part 135 air taxi/commercial operators.

DETERMINATION: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Des Moines International Airport.

BRIEF DESCRIPTION OF PROJECT APPROVED FOR COLLECTION AND USE:

Taxiway D reconstruction.

DECISION DATE: October 23, 2012.

**FOR FURTHER INFORMATION CONTACT:** Sheila Bridges, Central Region Airports Division, (816) 329–2638.

PUBLIC AGENCY: City of Waterloo, Iowa.

APPLICATION NUMBER: 12–11–C–00–ALO.

APPLICATION TYPE: Impose and use a PFC.

PFC LEVEL: $4.50.

TOTAL PFC REVENUE APPROVED IN THIS DECISION: $275,900.

EARLIEST CHARGE EFFECTIVE DATE: August 1, 2015.

ESTIMATED CHARGE EXPIRATION DATE: August 1, 2019.

CLASS OF AIR CARRIERS NOT REQUIRED TO COLLECT PFC'S: None.

BRIEF DESCRIPTION OF PROJECTS APPROVED FOR COLLECTION AND USE:

Taxiway A east rehabilitation—construction phase.

Taxiway B rehabilitation—construction phase.

DECISION DATE: October 23, 2012.

**FOR FURTHER INFORMATION CONTACT:** Jim Johnson, Central Region Airports Division, (816) 329–2600.

PUBLIC AGENCY: Monterey Peninsula Airport District, Monterey, California.

APPLICATION NUMBER: 13–18–C–00–MRY.

APPLICATION TYPE: Impose and use a PFC.

PFC LEVEL: $4.50.

TOTAL PFC REVENUE APPROVED IN THIS DECISION: $1,200,000.

EARLIEST CHARGE EFFECTIVE DATE: February 1, 2013.

ESTIMATED CHARGE EXPIRATION DATE: February 1, 2014.

CLASS OF AIR CARRIERS NOT REQUIRED TO COLLECT PFC'S:

Nonscheduled/on-demand air carriers filing FAA Form 1800–31.

DETERMINATION: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Monterey Peninsula Airport.

BRIEF DESCRIPTION OF PROJECTS APPROVED FOR COLLECTION AND USE:

Update airport master plan study.

Improve runway 10R/28L safety area—phase III.

Install perimeter fence alarm.

Apron rehabilitation—aircraft rescue and firefighting ramp.

DECISION DATE: October 30, 2012.

**FOR FURTHER INFORMATION CONTACT:** Neil Kumar, San Francisco Airports District Office, (650) 827–7627.

PUBLIC AGENCY: County of Gunnison, Gunnison, Colorado.

APPLICATION NUMBER: 12–06–C–00–GUC.

APPLICATION TYPE: Impose and use a PFC.

PFC LEVEL: $4.50.

TOTAL PFC REVENUE APPROVED IN THIS DECISION: $452,445.

EARLIEST CHARGE EFFECTIVE DATE: May 1, 2020.

ESTIMATED CHARGE EXPIRATION DATE: January 1, 2023.

CLASS OF AIR CARRIERS NOT REQUIRED TO COLLECT PFC'S:

None.

BRIEF DESCRIPTION OF PROJECTS APPROVED FOR COLLECTION AND USE:

Update wildlife hazard assessment plan.

Rehabilitate terminal building (phase I).

Rehabilitate terminal building (phase II).

Rehabilitate terminal building (phase III).

Rehabilitate terminal building (phase IV).

Rehabilitate runway 6/24.

Rehabilitate taxiway A system.

Rehabilitate general aviation apron areas.

PFC administration.

DECISION DATE: October 30, 2012.

**FOR FURTHER INFORMATION CONTACT:** Jesse Lyman, Denver Airports District Office, (303) 342–1262.

AMENDMENTS TO PFC APPROVALS

| Amendment No., City, State | Amendment approved date | Original approved net PFC revenue | Amended approved net PFC revenue | Original estimated charge exp. date | Amended estimated charge exp. date |
|---|---|---|---|---|---|
| 10–07–C–01–RSW, Fort Myers, FL | 09/27/12 | $51,877,571 | $56,490,299 | 05/01/18 | 10/01/18 |
| 07–05–C–01–FSM, Fort Smith, AR | 10/04/12 | 1,250,500 | 1,310,108 | 04/01/13 | 01/01/13 |
| 06–05–C–04–MOB, Mobile, AL | 10/12/12 | 4,850,267 | 4,681,541 | 06/01/15 | 05/01/13 |
| 12–14–C–01–YKM, Yakima, WA | 10/12/12 | 703,801 | 907,615 | 02/01/14 | 03/01/15 |
| 09–07–C–02–GRK, Killeen, TX | 10/18/12 | 2,565,711 | 3,125,711 | 01/01/13 | 04/01/13 |
| *07–04–C–01–ONT, Ontario, CA | 10/19/12 | 96,648,998 | 96,648,998 | 04/01/13 | 10/01/21 |
| 96–03–C–02–SJU, San Juan, PR | 10/23/12 | 68,223,897 | 62,028,587 | 04/01/02 | 04/01/02 |

NOTES:
The amendment denoted by an asterisk (*) include a change to the PFC level charged from $4.50 per enplaned passenger to $2.00 per enplaned passenger. For Ontario, CA, this change is effective on January 1, 2013.

Issued in Washington, DC on September 4, 2013.

**Joe Hebert,**

*Manager, Financial Analysis and Passenger Facility Charge Branch.*

[FR Doc. 2013–22559 Filed 9–16–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

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

**ACTION:** Monthly Notice of PFC Approvals and Disapprovals. In December 2012, there was one application approved. Additionally, one approved amendment to a previously approved application is listed.

**SUMMARY:** The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

**PFC Applications Approved**

*Public Agency:* Louisville Regional Airport Authority, Louisville, Kentucky.

*Application Number:* 12–07–C–00–SDF.

*Application Type:* Impose and use a PFC.

*PFC Level:* $4.50.

*Total PFC Revenue Approved in This Decision:* $2,250,000.

*Earliest Charge Effective Date:* December 1, 2016.

*Estimated Charge Expiration Date:* April 1, 2017.

*Class of Air Carriers Not Required To Collect PFC'S:*

Air taxi commercial operators filing FAA Form 1800–31 which operate at Louisville International Airport (SDF).

*Determination:* Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at SDF.

*Brief Description of Projects Approved for Collection and Use:*

Jet bridges acquisition.

Jet bridges rehabilitation and installation of pre-conditioned air units.

*Decision Date:* December 10, 2012.

**FOR FURTHER INFORMATION CONTACT:** Cynthia Wills, Memphis Airports District Office, (901) 322–8190.

AMENDMENTS TO PFC APPROVALS

| Amendment No., City, State | Amendment approved date | Original approved net PFC revenue | Amended approved net PFC revenue | Original estimated charge exp. date | Amended estimated charge exp. date |
|---|---|---|---|---|---|
| 09–03–C–01–CLT, Charlotte, NC. | 11/30/12 | $80,765,972 | $79,265,972 | 07/01/20 | 07/01/20 |

Issued in Washington, DC, on September 4, 2013.

**Joe Hebert,**

*Manager, Financial Analysis and Passenger Facility Charge Branch.*

[FR Doc. 2013–22563 Filed 9–16–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

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

**ACTION:** Monthly Notice of PFC Approvals and Disapprovals. In November 2012, there were four applications approved. Additionally, 16 approved amendments to previously approved applications are listed.

**SUMMARY:** The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

**PFC Applications Approved**

*Public Agency:* City of La Crosse, Wisconsin.

*Application Number:* 12–10–C–00–LSE.

*Application Type:* Impose and use a PFC.

*PFC Level:* $4.50.

*Total PFC Revenue Approved in This Decision:* $2,665,657.

*Earliest Charge Effective Date:* January 1, 2016.

*Estimated Charge Expiration Date:* January 1, 2023.

*Class of Air Carriers Not Required To Collect PFC's:* None.

*Brief Description of Projects Approved for Collection and Use:*

Commercial terminal building upgrades—phase II.
Commercial terminal building upgrades—phase III.
Snow removal equipment.
Emergency radio system upgrade.
PFC administrative fees.

*Decision Date:* November 1, 2012.

**FOR FURTHER INFORMATION CONTACT:** Sandy Depottey, Minneapolis Airports District Office, (612) 253–4642.

*Public Agency:* Charleston County Aviation Authority, Charleston, South Carolina.

*Application Number:* 12–02–C–00–CHS.

*Application Type:* Impose and use a PFC.

*PFC Level:* $4.50.

*Total PFC Revenue Approved in This Decision:* $10,060,939.

*Earliest Charge Effective Date:* June 1, 2013.

*Estimated Charge Expiration Date:* May 1, 2015.

*Class of Air Carriers Not Required To Collect PFC's:*

Air taxi/commercial operators filing FAA Form 1800–31 and operating at Charleston International Airport (CHS).

*Determination:* Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at CHS.

*Brief Description of Projects Approved for Collection and Use:*

Taxiway F improvements (design and construction).
Drainage ditch improvements (design and construction).
Apron C expansion (design and construction).
Terminal handicapped accessibility improvements (design and construction).
PFC implementation and administrative costs.

*Brief Description of Project Partially Approved for Collection and Use:*

Terminal redevelopment and improvement, project phase 1—terminal apron (design and construct).

*Determination:* The approved amount was reduced from that requested due to additional Airport Improvement Program funding for the project.

Brief Description of Withdrawn Projects:

Terminal annex facility (design and construction).
Concourse bathroom additions (design).

*Date of Withdrawal:* August 15, 2012.

*Decision Date:* November 2, 2012.

**FOR FURTHER INFORMATION CONTACT:** Robert Rau, Atlanta Airports District Office, (404) 305–7004.

*Public Agency:* Lawton Metropolitan Airport Authority, Lawton, Oklahoma.

*Application Number:* 13–07–C–00–LAW.

*Application Type:* Impose and use a PFC.

*PFC Level:* $4.50.

*Total PFC Revenue Approved in This Decision:* $782,263.

*Earliest Charge Effective Date:* November 1, 2013.

*Estimated Charge Expiration Date:* July 1, 2016.

*Classes of Air Carriers Not Required To Collect PFC's:*

(1) Air taxi/commercial operators filing FAA Form 1800–31; and (2) commuter air carriers enplaning non-scheduled passengers filing DOT Form 41, Schedule T–100.

*Determination:* Approved. Based on information contained in the public agency's application, the FAA has determined that each approved class accounts for less than 1 percent of the total annual enplanements at Lawton-Fort Sill Regional Airport.

*Brief Description of Projects Approved for Collection and Use:*

Taxiway A pavement analysis and soil test.
Taxiway A pavement rehabilitation.
Runway 17/35 rehabilitation design.
Taxiway/apron/fuel road pavement replacement.
Taxiway/apron/fuel road pavement replacement construction.
Boarding gate area renovation preliminary design.
Boarding gate area final design and construction.
Baggage claim expansion preliminary design.
Baggage claim expansion construction.
Jet bridge construction and installation.
Snow removal equipment building design/construct.
Snow removal equipment procurement—sweeper truck.
Aircraft rescue and firefighting vehicle acquisition.
Wildlife hazard assessment.
PFC application and administration.

*Decision Date:* November 7, 2012.

**FOR FURTHER INFORMATION CONTACT:** Jimmy Pierre, Arkansas/Oklahoma Airports Development Office, (817) 222–5637.

*Public Agency:* Cedar City Regional Airport, Cedar City, Utah.

*Application Number:* 13–03–C–00–CDC.

*Application Type:* Impose and use a PFC.

*PFC Level:* $4.50.

*Total PFC Revenue Approved in This Decision:* $330,000.

*Earliest Charge Effective Date:* March 1, 2016.

*Estimated Charge Expiration Date:* March 1, 2024.

*Class of Air Carriers Not Required To Collect PFC's:*

Non-scheduled/on-demand carriers filing FAA Form 1800–31.

*Determination:* Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Cedar City Regional Airport.

*Brief Description of Project Approved for Collection and Use:*

Construct aircraft rescue and firefighting building.

*Decision Date:* November 16, 2012.

**FOR FURTHER INFORMATION CONTACT:** Jesse Lyman, Denver Airports District Office, (303) 342–1262.

AMENDMENT TO PFC APPROVALS

| Amendment No., City, State | Amendment approved date | Original approved net PFC revenue | Amended approved net PFC revenue | Original estimated charge exp. date | Amended estimated charge exp. date |
|---|---|---|---|---|---|
| 08–11–C–01–YKM, Yakima, WA | 10/31/12 | $783,961 | $457,730 | 04/01/11 | 04/01/11 |
| 05–10–C–01–JAC, Jackson, WY | 11/02/12 | 2,277,186 | 2,858,817 | 12/01/09 | 01/01/10 |
| 10–09–C–02–ALO, Waterloo, IA | 11/07/12 | 44,750 | 47,047 | 09/01/11 | 12/01/13 |
| 06–10–C–05–CVG, Covington, KY | 11/14/12 | 35,499,000 | 21,863,000 | 05/01/15 | 04/01/12 |
| 07–11–C–03–CVG, Covington, KY | 11/14/12 | 3,601,000 | 3,561,000 | 08/01/12 | 07/01/12 |
| 09–12–C–03–CVG, Covington, KY | 11/14/12 | 22,477,000 | 13,416,000 | 12/01/15 | 01/01/13 |
| 11–13–C–01–CVG, Covington, KY | 11/14/12 | 32,958,000 | 20,539,000 | 02/01/18 | 10/01/14 |
| 03–05–C–02–TUL, Tulsa, OK | 11/15/12 | 28,228,519 | 30,009,667 | 07/01/10 | 11/01/10 |

AMENDMENT TO PFC APPROVALS—Continued

| Amendment No., City, State | Amendment approved date | Original approved net PFC revenue | Amended approved net PFC revenue | Original estimated charge exp. date | Amended estimated charge exp. date |
|---|---|---|---|---|---|
| 08–06–C–02–TUL, Tulsa, OK | 11/15/12 | 57,177,803 | 57,444,148 | 04/01/19 | 02/01/21 |
| 95–01–C–07–MCI, Kansas City, MO | 11/19/12 | 277,485,571 | 280,588,692 | 12/01/10 | 12/01/10 |
| 05–05–C–02–MCI, Kansas City, MO | 11/19/12 | 30,984,859 | 31,070,963 | 07/01/14 | 07/01/14 |
| 09–06–C–01–MCI, Kansas City, MO | 11/19/12 | 25,579,060 | 27,416,777 | 06/01/15 | 06/01/15 |
| 03–05–C–02–MBS, Saginaw, MI | 11/20/12 | 1,378,794 | 400,764 | 04/01/08 | 08/01/07 |
| 11–15–C–01–BGM, Binghamton, NY | 11/20/12 | 298,884 | 614,250 | 09/01/17 | 06/01/17 |
| 10–10–C–01–PBI, West Palm Beach, FL | 11/21/12 | 11,868,332 | 12,453,559 | 09/01/10 | 12/01/11 |
| 11–03–C–01–LCH, Lake Charles, LA | 11/27/12 | 650,000 | 665,490 | 09/01/15 | 01/01/16 |

Issued in Washington, DC, on September 4, 2013.

**Joe Hebert,**

*Manager, Financial Analysis and Passenger Facility Charge Branch.*

[FR Doc. 2013–22562 Filed 9–16–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

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

**ACTION:** Monthly Notice of PFC Approvals and Disapprovals. In September 2012, there were five applications approved. Additionally, 10 approved amendments to previously approved applications are listed.

**SUMMARY:** The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L.101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph d of § 158.29.

**PFC Applications Approved**

*Public Agency:* City of Savannah and Savannah Airport Commission, Savannah, Georgia.

*Application Number:* 12–09–C–00–SAV.

*Application Type:* Impose and use a PFC.

*PFC Level:* $4.50.

*Total PFC Revenue Approved In This Decision:* $1,619,201.

*Earliest Charge Effective Date:* December 1, 2016.

*Estimated Charge Expiration Date:* October 1, 2017.

*Class Of Air Carriers Not Required To Collect PFC's:*

Air taxi/commercial operators filing FAA Form 1800–31 and operating at Savannah Hilton Head International Airport (SAV).

*Determination:* Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at SAV.

*Brief Description of Projects Approved for Collection and Use:*

Traffic survey design.

Terminal curbside canopy construction.

Tree removal runway 10 approach.

PFC implementation and administration costs.

*Brief Description of Projects Approved for Use:*

Site mitigation.

Realign and construct Gulfstream Road.

Taxiway A extension north—construction/tunnel construction.

Electrical vault.

Taxiway H construction.

Storm water update.

Gulfstream Road/tunnel design.

Airfield electrical vault design.

Taxiway A design.

Taxiway H design.

*Decision Date:* September 18, 2012.

**FOR FURTHER INFORMATION CONTACT:** Robert Rau, Atlanta Airports District Office, (404) 305–7004.

*Public Agency:* Grand Forks Regional Airport Authority, Grand Forks, North Dakota.

*Application Number:* 12–09–C–00–GFK.

*Application Type:* Impose and use a PFC.

*PFC Level:* $4.50.

*Total PFC Revenue Approved in This Decision:* $550,000.

*Earliest Charge Effective Date:* January 1, 2018.

*Estimated Charge Expiration Date:* January 1, 2019.

*Class of Air Carriers Not Required To Collect PFC's:*

Air taxi/commercial operators filing FAA Form 1800–31.

*Determination:* Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Grand Forks International Airport.

*Brief Description of Project Approved for Collection and Use:*

Purchase of runway broom.

*Decision Date:* September 18, 2012.

**FOR FURTHER INFORMATION CONTACT:** David Anderson, Bismarck Airports District Office, (701) 323–7385.

*Public Agency:* Huntsville-Madison County Airport Authority, Huntsville, Alabama.

*Application Number:* 12–18–C–00–HSV.

*Application Type:* Impose and use a PFC.

*PFC Level:* $4.50.

*Total PFC Revenue Approved in This Decision:* $700,868.

*Earliest Charge Effective Date:* May 1, 2022.

*Estimated Charge Expiration Date:* September 1, 2022.

*Classes of Air Carriers Not Required To Collect PFC's:*

(1) Air taxi/commercial operators at Huntsville International Airport—Carl T Jones field (HSV); (2) certified air carriers at HSV; and (3) certified route air carriers having fewer than 500 annual passenger enplanements at HSV.

*Determination:* Approved. Based on information contained in the public agency's application, the FAA has determined that each approved class accounts for less than 1 percent of the total annual enplanements at HSV.

*Brief Description of Projects Approved for Collection and Use:*

Acquire land for development.

Aircraft rescue and firefighting vehicles and equipment.

Glenn Hearn Boulevard/James Record Road intersection improvement.

Airport pavement rehabilitation.

Airport layout plan master plan update.

Interactive training and workstation.

*Decision Date:* September 20, 2012.

**FOR FURTHER INFORMATION CONTACT:** Jonathan Linquist, Jackson Airports District Office, (601) 664–9893.

*Public Agency:* Niagara Frontier Transportation Authority, Buffalo, New York.

*Application Number:* 11–09–C–00–BUF.

*Application Type:* Impose and use a PFC.

*PFC Level:* $4.50.

*Total PFC Revenue Approved in This Decision:* $1,702,533.

*Earliest Charge Effective Date:* June 1, 2014.

*Estimated Charge Expiration Date:* August 1, 2014.

*Class of Air Carriers Not Required To Collect PFC's:*

None.

*Brief Description of Projects Approved for Collection and Use at Buffalo Niagara International Airport (BUF) at a $3.00 PFC Level:*

Glycol recovery vehicles.

Purchase runway broom.

*Brief Description of Projects Approved for Collection at BUF and Use at Niagara Falls International Airport at a $4.50 PFC Level:*

Mill and overlay of runway 10L/28R.

Runway 06/24 safety area improvements.

*Brief Description of Withdrawn Projects:*

Noise compatibility program at BUF.

Glycol treatment project at BUF.

Runway friction tester at BUF.

PFC planning and programming administration costs.

*Date of Withdrawal:* May 3, 2012.

*Decision Date:* September 24, 2012.

**FOR FURTHER INFORMATION CONTACT:** Patricia Henn, Eastern Regional Airports Division, (718) 553–3357.

*Public Agency:* Maryland Department of Transportation and Maryland Aviation Administration, Baltimore, Maryland.

*Application Number:* 12–10–C–00–BWI.

*Application Type:* Impose and use a PFC.

*PFC Level:* $4.50.

*Total PFC Revenue Approved in This Decision:* $341,596,215.

*Earliest Charge Effective Date:* April 1, 2021.

*Estimated Charge Expiration Date:* March 1, 2028.

*Class of Air Carriers Not Required To Collect PFC's:*

Air taxi/commercial operators filing FAA Form 1800–31.

*Determination:* Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Baltimore-Washington International Thurgood Marshall Airport.

*Brief Description of Projects Approved for Collection and Use at a $4.50 PFC Level:*

Property acquisition—runway protection zone.

Obstruction removal—runways 10/28 and 15R/33L.

Environmental mitigation—runway safety area.

Runway 210/28 airfield lighting improvements.

Runway 10/28 navigational aids.

Runway 15R/33L lighting improvements.

Runway 15R/33L pavement rehabilitation and standards.

Taxiway P/runway 15R deicing pad pavement rehabilitation.

Taxiway P/runway 15R deicing pad lighting rehabilitation.

Taxiways serving runway 15R/33L (pavement rehabilitation).

Taxiways serving runway 15R/33L (lighting).

Runway 15R/33L navigational aids.

Runway 15R/33L flight kitchen demolition.

Runway 15L/33R runway safety area improvements.

Future taxiway P (pavement removal).

Future taxiway P (taxiway lighting).

Future taxiway P (pavement rehabilitation).

Taxiway C standards and compliance.

*Brief Description of Projects Partially Approved for Collection and Use at a $4.50 PFC Level:*

Runway 10/28 runway safety area improvements.

*Determination:* The approved amount was reduced from that requested due to the public agency receiving an Airport Improvement Program (AIP) grant for partial project funding.

Runway 10/28 rehabilitation and standards.

*Determination:* The approved amount was reduced from that requested due to the public agency receiving an AIP grant for partial project funding.

Runway 10/28 AMTRAK catenary system modification.

*Determination:* The approved amount was reduced from that requested due to the public agency receiving an AIP grant for partial project funding.

Runway 15R/33L runway safety area improvements.

*Determination:* The approved amount was reduced from that requested due to the commitment for partial AIP funding for the project.

*Decision Date:* September 25, 2012.

**FOR FURTHER INFORMATION CONTACT:** Jeffery Breeden, Washington Airports District Office, (703) 661–1363.

## AMENDMENTS TO PFC APPROVALS

| Amendment No., City, State | Amendment approved date | Original approved net PFC revenue | Amended approved net PFC revenue | Original estimated charge exp. date | Amended estimated charge exp. date |
|---|---|---|---|---|---|
| 01–03–C–06–LIT, Little Rock, AR | 08/30/12 | $8,239,062 | $8,237,062 | 07/01/04 | 07/01/04 |
| 04–04–U–03–LIT, Little Rock, AR | 08/30/12 | NA | NA | 07/01/04 | 07/01/04 |
| 11–06–C–01–SDF, Louisville, KY | 09/04/12 | 2,123,882 | 2,479,014 | 11/01/16 | 12/01/16 |
| 07–08–C–01–BTM, Butte, MT | 09/11/12 | 146,916 | 58,163 | 03/01/10 | 03/01/10 |
| 04–07–C–02–LSE, La Crosse, WI | 09/17/12 | 1,439,553 | 1,426,949 | 06/01/07 | 06/01/07 |
| 93–01–C–04–CHA, Chattanooga, TN | 09/19/12 | 9,013,922 | 5,943,004 | 11/01/04 | 11/01/04 |
| 00–03–C–03–CHA, Chattanooga, TN | 09/19/12 | 5,752,115 | 5,980,888 | 08/01/10 | 08/01/10 |
| 05–04–C–02–FNL, Fort Collins, CO | 09/20/12 | 276,130 | 212,831 | 03/01/07 | 03/01/07 |
| *00–06–C–08–MKE, Milwaukee, WI | 09/25/12 | 124,348,365 | 121,356,488 | 07/01/13 | 04/01/13 |
| 02–07–C–06–MKE, Milwaukee, WI | 09/26/12 | 35,251,806 | 34,755,919 | 11/01/15 | 04/01/15 |

**Notes:** The amendment denoted by an asterisk (*) include a change to the PFC level charged from $3.00 per enplaned passenger to $4.50 per enplaned passenger. For Milwaukee, WI, this change is effective on November 1, 2012.

Issued in Washington, DC. on September 4, 2013.

**Joe Hebert,**

*Manager, Financial Analysis and Passenger Facility Charge Branch.*

[FR Doc. 2013–22557 Filed 9–16–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Waiver of Requirement To Enter Into a Reciprocal Waiver of Claims Agreement With All Customers for Orbital Sciences Corporation

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

**ACTION:** Notice of waiver.

**SUMMARY:** This notice concerns a petition for waiver submitted to the Federal Aviation Administration (FAA) by Orbital Sciences Corporation (Orbital) to waive in part the requirement that a launch operator enter into a reciprocal waiver of claims with each customer. The FAA grants the petition.

**FOR FURTHER INFORMATION CONTACT:** For technical questions concerning this waiver, contact Charles P. Brinkman, Licensing Program Lead, Commercial Space Transportation—Licensing and Evaluation Division, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–7715; email: *Phil.Brinkman@faa.gov.* For legal questions concerning this waiver, contact Sabrina Jawed, Attorney-Adviser, Space Law Branch, AGC–250, Office of the Chief Counsel, Regulations Division, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8839; email: *Sabrina.Jawed@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background

On August 8, 2013, Orbital submitted a petition to the FAA's Office of Commercial Space Transportation (AST) requesting a waiver under its launch license for flight of an Antares launch vehicle carrying Orbital's Cygnus module.[1] Orbital requested a partial waiver of 14 CFR 440.17, which requires a licensee to enter into a reciprocal waiver of claims (a ''cross-waiver'') with each of its customers.

The FAA licenses the launch of a launch vehicle and reentry of a reentry vehicle under authority granted to the Secretary of Transportation by the Commercial Space Launch Act of 1984, as amended and re-codified by 51 U.S.C. Subtitle V, chapter 509 (Chapter 509), and delegated to the FAA Administrator and the Associate Administrator for Commercial Space Transportation, who exercises licensing authority under Chapter 509.

The petition for waiver applies to Orbital's September 2013 launch of an Antares launch vehicle and Orbital's Cygnus pressurized cargo module to be used in the delivery of cargo to the International Space Station (ISS). The Cygnus cargo module will carry cargo for NASA to resupply the ISS. In addition to the ISS supplies, the Antares may also carry other payloads whose transport NASA has arranged as part of the Johnson Space Center cargo. These consist of a NanoRacks, LLC, and NanoRacks locker insert and student experiments created under NASA's Student Spaceflight Experiments Program (SSEP). NASA describes SSEP as a national science, technology, engineering, and mathematics education initiative.[2] According to its Space Act Agreement with NASA,[3] NanoRacks arranges to carry the student experiments on a locker insert to put into an experimental locker on board the ISS. The Space Act Agreement states that NASA will provide on-orbit resources and limited launch opportunities to NanoRacks for the launch of its insert and the experiments the insert carries. Orbital provided the FAA, along with its petition for waiver, a letter signed by Christopher Cummins, Chief Operating Officer of NanoRacks, stating that NanoRacks will not have any personnel at the launch site for the OrbD–1[4] launch, which is the launch that is the subject of this waiver.

NanoRacks and each student who places a payload on board the NanoRacks insert qualify as customers under the FAA's definitions. Section 440.3 defines a customer, in relevant part, as any person with rights in the payload or any part of the payload, or any person who has placed property on board the payload for launch, reentry, or payload services. A person is an individual or an entity organized or existing under the laws of a State or country. 51 U.S.C. 50901(12), 14 CFR 401.5. The subjects of this waiver are persons because the students are individuals and NanoRacks is an entity, a limited liability corporation. Accordingly, because NanoRacks and the students are persons who have rights in their respective payloads, the locker insert and the experiments, due to their ownership of those objects, and because they have placed property on board, they are customers. Section 440.17 requires their signatures as customers.

In this instance, however, NanoRacks and the students are also subject to a NASA reciprocal waivers of claims, a cross-waiver, which is governed by NASA's regulations at 14 CFR part 1266. Article 8 of the Space Act Agreement between NASA and NanoRacks governs liability and risk of loss and establishes a cross-waiver of liability.

Other than the NanoRacks and SSEP customers, all other customers as defined by 14 CFR 440.3 will execute the cross-waivers required by 14 CFR 440.17. The cross-waivers among Orbital and all customers, other than NanoRacks and SSEP customers, are amended to provide that signing customers waive claims against any other customer as defined by 14 CFR 440.3. The petition for partial waiver of the requirement that the licensee implement a cross-waiver with each customer applies to NanoRacks and the SSEP customers as customers of the September 2013 launch of the Antares launch vehicle carrying the Cygnus module.

### Waiver Criteria

Chapter 509 allows the FAA to waive a license requirement if the waiver (1) will not jeopardize public health and safety, safety of property; (2) will not jeopardize national security and foreign policy interests of the United States; and (3) will be in the public interest. 51 U.S.C. 50905(b)(3) (2013); 14 CFR 404.5(b) (2013).

[1] This mission is also referred to as OrbD–1. *See* Letter from Mark A. Wright, Manager, Safety Inspection Division AST, to Natalie Imfeld, Contracts Manager, Advanced Programs Group Orbital Sciences Corporation (August 16, 2013) (on file with FAA) (referring to Antares launch of the Cygnus payload as ORB–D1 Mission).

[2] Space Station—Here we Come! NASA Press Release: *http://www.nasa.gov/audience/foreducators/station-here-we-come.html* (last visited August 16, 2013).

[3] Nonreimbursable Space Act Agreement Between NanoRacks, LLC and NASA for Operation of the NanoRacks System Aboard the International Space Station National Laboratory, (Sept. 4 and 9 2009) (NanoRacks Agreement), *387938main—SAA—SOMD—6355—NanoRacks—ISS—National—Lab.pdf.*

[4] OrbD–1 refers to the COTS Demo mission currently scheduled to launch in September on the Antares launch vehicle from Wallops. *See* Letter from Mark A. Wright, Manager, Safety Inspection Division AST, to Natalie Imfeld, Contracts Manager, Advanced Programs Group Orbital Sciences Corporation (August 16, 2013) (on file with author) (referring to Antares launch of the Cygnus payload as ORB–D1 Mission).

**Waiver of FAA Requirement for Each Customer To Sign a Reciprocal Waiver of Claims**

The FAA waives 14 CFR 440.17, which requires a licensee to enter into a reciprocal waiver of claims with each of its customers with respect to NanoRacks and the SSEP participants for the September 2013 Antares launch.

In 1988, as part of a comprehensive financial responsibility and risk sharing regime that protects launch participants and the U.S. Government from the risks of catastrophic loss and litigation, Congress required that all launch participants agree to waive claims against each other for their own property damage or loss, and to cover losses experienced by their own employees. 51 U.S.C. 50915(b). This part of the regime was intended to relieve launch participants of the burden of obtaining property insurance by having each party be responsible for the loss of its own property and to limit the universe of claims that might arise as a result of a launch. H. Rep. 100–639, at 11–12 (1988); S. Rep. 100–593, at 14, (1988); *Financial Responsibility Requirements for Licensed Launch Activities, Notice of Proposed Rulemaking,* 61 FR 38992, 39011 (Jul. 25, 1996). The FAA's implementing regulations may be found at 14 CFR part 440.

In its request for a waiver, Orbital submits that the NASA Space Act Agreement reciprocal waivers of claims imposed on NanoRacks and the SSEP participants are equivalent to the requirements imposed on each customer under the FAA's requirements of 14 CFR part 440. A comparison of the two regimes shows that in this particular situation the two sets of cross-waivers are sufficiently similar that the statutory goals of 51 U.S.C. 50914(b) will be met by the FAA agreeing to accept the NASA cross-waivers in this instance.

The FAA cross-waivers require the launch participants, including the U.S. Government and each customer, and their respective contractors and subcontractors, to waive and release claims against all the other parties to the waiver and agree to assume financial responsibility for property damage sustained by that party and for bodily injury or property damage sustained by the party's own employees, and to hold harmless and indemnify each other from bodily injury or property damage sustained by their respective employees resulting from the licensed activity, regardless of fault. 14 CFR 440.17(b) and (c). Each party [5] to the cross-waiver must indemnify the other parties from claims by the indemnifying party's contractors and subcontractors if the indemnifying party fails to properly extend the requirements of the cross-waivers to its contractors and subcontractors. 14 CFR 440.17(d). A comparison of each element shows that, although there are some differences, because the NASA cross-waiver signed by NanoRacks is consistent with Congressional intent and the FAA's regulations, because relevant employees will not be present at the launch site, and because the Orbital cross-waiver submitted to the FAA has been amended to protect non-signing customers, NanoRacks and the SSEP participants need not sign a cross-waiver under 14 CFR part 440.

For the reasons stated in the waiver the FAA published for SpaceX on October 16, 2012,[6] and for the reasons stated above, the FAA finds that this waiver implicates no safety, national security or foreign policy issues. The waiver is consistent with the public interest goals of Chapter 509. Under 51 U.S.C. 50914, Congress determined that it was necessary to reduce the costs associated with insurance and litigation by requiring launch participants, including customers, to waive claims against each other. Because the NanoRacks Agreement under 14 CFR part 1266 accomplishes these goals by the same or similar means, the FAA finds this request in the public interest, and grants the waiver with respect to NanoRacks and the SSEP participants in reliance on the representations Orbital made in its petition.

Issued in Washington, DC, on September 10, 2013.

**Kenneth Wong,**

*Commercial Space Transportation, Licensing and Evaluation Division Manager.*

[FR Doc. 2013–22566 Filed 9–16–13; 8:45 am]

**BILLING CODE 4910–13–P**

[5] Indemnification by the U.S. Government is conditioned upon the passage of legislation. 51 U.S.C. 50915; 14 CFR 440.17(d).

[6] Waiver of Requirement to Enter Into a Reciprocal Waiver of Claims Agreement With All Customers, Notice of Waiver, 77 FR 63221 (Oct. 16, 2012).

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–2012–0165; Notice 1]**

### General Motors, LLC, Receipt of Petition for Decision of Inconsequential Noncompliance

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Receipt of petition.

**SUMMARY:** General Motors, LLC (GM) [1] has determined that certain model year (MY) 2011 through 2013 Buick Regal and MY 2013 Chevrolet Malibu passenger cars may not fully comply with the telltale bulb outage requirement found in paragraph S5.5.6 of Federal Motor Vehicle Safety Standard (FMVSS) No 108, *Lamps, Reflective Devices, and Associated Equipment.* GM has filed an appropriate report dated October 3, 2012, pursuant to 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports.*

**DATES:** October 17, 2013.

**ADDRESSES:** Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods:

- *Mail:* Send by mail addressed to: 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 Deliver:* Deliver comments by hand to: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.
- *Electronically:* Submit comments electronically by: logging onto the Federal Docket Management System (FDMS) Web site at *http://www.regulations.gov/.* Follow the online instructions for submitting comments. Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If

[1] General Motors, LLC is a manufacturer of motor vehicles and is registered under the laws of the state of Michigan.

comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Documents submitted to a docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at *http://www.regulations.gov* by following the online instructions for accessing the dockets. DOT's complete Privacy Act Statement is available for review in the **Federal Register** published on April 11, 2000, (65 FR 19477–78).

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

**SUPPLEMENTARY INFORMATION:**

I. *GM's petition:* Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR Part 556), GM submitted a petition for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of GM's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, these provisions only apply to the 109,563 [2] vehicles that GM no longer controlled at the time it determined that the noncompliance existed.

II. *Vehicles Involved:* Affected are approximately 109,563 MY 2011 through 2013 Buick Regal and MY 2013 Chevrolet Malibu passenger cars manufactured from January 20, 2010 through September 18, 2012.

III. *Noncompliance:* GM explains that the subject vehicles are equipped with front turn signals, each of which incorporates two light sources. When both light sources of either front turn signal fail, bulb outage indication is provided as required by paragraph S5.5.6 of FMVSS No. 108. However, bulb outage indication is not provided if only one of the light sources fails in either front turn signal assembly. If a single bulb fails to illuminate, the turn signal is still illuminated by the other bulb.

IV. *Rule Text:* Paragraph S5.5.6 of FMVSS No. 108 specifically states:

S5.5.6 Each vehicle equipped with a turn signal operating unit shall also have an illuminated pilot indicator. Failure of one or more turn signal lamps to operate shall be indicated in accordance with SAE Standard J588e, Turn Signal Lamps, September 1970 . . .

V. *Summary of GM'S Analyses:* GM stated its belief that the lack of bulb outage indication is inconsequential to motor vehicle safety for the following reasons:

1. As delivered to the customer the turn signal lamps function properly and meet all requirements of FMVSS No. 108. This is not a situation where the photometric output of the turn signals fails to meet the requirements as delivered to the customer. In fact, the light output of the normally operating turn signals greatly exceeds the photometric requirements as produced.

2. Most drivers will never be affected by the reduction of photometric output, without outage indication as a result of a single front bulb failure, because the failure rate of the turn signal bulb is extremely low. The bulb life of these turn signals is three to four times the life of the bulbs used in turn signals when the bulb outage indication requirement was incorporated into the standard. The bulbs used in the subject front turn signals have a tested life of 1,100 hours at 12.8 volts. Using this information in a Monte Carlo simulation analysis provides the following results:

| | | | | |
|---|---|---|---|---|
| Years | 2.5 | 5.0 | 7.5 | 10.0 |
| Miles | 31,250 | 62,500 | 93,750 | 125,000 |
| No. of Burnouts | 0 | 0 | 1 | 4 |
| SIM Vehicles | 10,000 | 10,000 | 10,000 | 10,000 |
| Failure IPTV | 0.000 | 0.000 | 0.400 | 4.000 |

Consequently, it is extremely unlikely a driver will experience a single turn signal bulb failure over the life of the vehicle, and thus the lack of outage indication, with a single bulb failure, is inconsequential to motor vehicle safety.

3. With a single bulb, the turn signal still functions and provides perceptible indication that the vehicle may be turning. In the extremely remote case that both light sources were to fail, in either front turn signal, bulb outage is indicated as required by the standard.

4. In the Malibu vehicle, if an outboard front turn bulb is not working, the inboard bulb continues to meet the photometric requirements. In this case, the centroid of the light shifts and is greater than 100 mm from the lit edge of the low beam head lamp. The light output of the inboard bulb easily meets the minimum photometric requirements specified in FMVSS No. 108.

5. If the inboard bulb burns out on the Malibu, or either bulb on the Regal, the remaining lamp continues to provide light which meets the photometric requirements in some zones, and comes close to the requirements in most of the remaining zones. This light exceeds the standard turn signal photometric requirements, but due to the location of the turn signal (i.e., the turn signal centroid within 100 mm of the lit edge of the low beam lamp) the 2.5 multiplier must be applied to photometric requirements.

a. For the Malibu turn signal lamps, the photometric requirements with the 2.5 multiplier, are met in three of the five zones; and are within 25% of the requirements in a 4th zone.

[2] GM's petition, which was filed under 49 CFR Part 556, requests an agency decision to exempt GM as a motor vehicle manufacturer from the notification and recall responsibilities of 49 CFR Part 573 for the 109,563 affected vehicles. However, a decision on this petition cannot relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, introduction or delivery for introduction into interstate commerce of the noncompliant motor vehicles under their control after GM notified them that the subject noncompliance existed.

b. For the Regal turn signal lamps, the photometric requirements with the 2.5 multiplier, are met in two of the five zones; and are within 25% of the requirements in two other zones. The Malibu and Regal turn signal lamps provide the required light under normal driving conditions. In the unlikely circumstance that a single bulb stops functioning, the remaining bulb continues to provide the minimum turn signal light specified in the standard and is generally within 25% of the minimum required light after the 2.5 multiplier is applied. In the case of these vehicles, GM's analysis indicates the light provided by the single bulb is perceptible to the motoring public.

GM has additionally informed NHTSA that it has corrected the noncompliance so that all future production vehicles will comply with FMVSS No. 108.

In summation, GM believes that the described noncompliance of its vehicles is inconsequential to motor vehicle safety, and that its petition, to exempt from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

**Authority:** 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8.

**Claude H. Harris,**

*Director, Office of Vehicle Safety Compliance.*

[FR Doc. 2013–22561 Filed 9–16–13; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 8910

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8910, Alternative Motor Vehicle Credit.

**DATES:** Written comments should be received on or before November 18, 2013 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Yvette Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Katherine Dean, at *Katherine.b.dean@irs.gov*.

**SUPPLEMENTARY INFORMATION:**

*Title:* Alternative Motor Vehicle Credit.

*OMB Number:* 1545–1998.

*Form Number:* 8910.

*Abstract:* Taxpayers will file Form 8910 to claim the credit for certain alternative motor vehicles placed in service after 2005.

*Current Actions:* The credit for conversion of ''plug-in'' electric vehicle facilities (IRC 30B(i)(4), and Public Law 111–5, s. 1142) expired, requiring the elimination of lines 4–10. This resulted in a decrease of 29,100 total burden hours.

*Type of Review:* Revision of a currently approved collection.

*Affected Public:* Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, Federal Government and State, Local or Tribal Government.

*Estimated Number of Respondents:* 10,000.

*Estimated Time Per Respondent:* 9 hours, 59 minutes.

*Estimated Total Annual Burden Hours:* 98,800.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 4, 2013.

**Yvette Lawrence,**

*IRS Reports Clearance Officer.*

[FR Doc. 2013–22532 Filed 9–16–13; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 8283–V

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8283–V, Payment Voucher for Filing Fee Under Section 170(f)(13).

**DATES:** Written comments should be received on or before November 18, 2013 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to Katherine Dean, at *Katherine.b.dean@irs.gov*.

**SUPPLEMENTARY INFORMATION:**

*Title:* Payment Voucher for Filing Fee Under Section 170(f)(13).

*OMB Number:* 1545–2069.

*Form Number:* 8283–V.

*Abstract:* The Pension Protection Act of 2006 (Pub. L. 109–280) provides in section 1213(c) of the Act that taxpayers claiming a deduction for a qualified conservation contribution with respect to the exterior of a building located in a registered historic district in excess of $ 10,000, must pay a $ 500 fee to the Internal Revenue Service or the deduction is not allowed.

*Current Actions:* There are no changes being made to Form 8283–V.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 1,500.

*Estimated Time per Respondent:* 28 minutes.

*Estimated Total Annual Burden Hours:* 690.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

*Comments are invited on:* (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 3, 2013.

**Yvette Lawrence,**

*OMB Reports Clearance Officer.*

[FR Doc. 2013–22534 Filed 9–16–13; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 4562

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4562, Depreciation and Amortization (Including Information on Listed Property).

**DATES:** Written comments should be received on or before November 18, 2013 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Kerry Dennis, 1111 Constitution Avenue NW., Washington DC 20224, or through the internet, at Kerry.Dennis@irs.gov.

**SUPPLEMENTARY INFORMATION:**

*Title:* Depreciation and Amortization (Including Information on Listed Property).

*OMB Number:* 1545–0172.

*Form Number:* Form 4562.

*Abstract:* Form 4562 is used to claim a deduction for depreciation and amortization; to make the election to expense certain tangible property under Internal Revenue Code section 179; and to provide information on the business/investment use of automobiles and other listed property. The form provides the IRS with the information necessary to determine that the correct depreciation deduction is being claimed.

*Current Actions:* There are no changes being made to Form 4562 at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations, farms, and individuals.

*Estimated Number of Respondents:* 12,313,626.

*Estimated Time per Respondent:* 37 hours, 8 minutes.

*Estimated Total Annual Burden Hours:* 448,368,447.

The following paragraph applies to all of the collections of information covered by this notice: An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 29, 2013.

**R. Joseph Durbala,**

*IRS Reports Clearance Officer.*

[FR Doc. 2013–22530 Filed 9–16–13; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form W–2G

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form W–2G, Certain Gambling Winnings.

**DATES:** Written comments should be received on or before November 18, 2013 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Yvette Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Katherine Dean, at *Katherine.b.dean@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Certain Gambling Winnings.

*OMB Number:* 1545–0238.

*Form Number:* Form W–2G.

*Abstract:* Internal Revenue Code sections 6041, 3402(q), and 3406 require payers of certain gambling winnings to withhold tax and to report the winnings to the IRS. IRS uses the information to verify compliance with the reporting rules and to verify that the winnings are properly reported on the recipient's tax return.

*Current Actions:* Four boxes were added (State Winnings, Local Winnings, Local Income Tax withheld, Name of Locality) at the request of TIGERS (Tax Information Group for E-Commerce Requirements Standardization) and the e-Channel Support e-Initiatives Group. The new boxes are added for the use of state and local authorities, and to make compliance with state/local tax requirements easier for the taxpayer. This change represents the clearest way to request the information, and is generally uniform with the layout of similar forms.

The addition of these elements resulted in an increase of

*Type of Review:* Revision of a currently approved collection.

*Affected Public:* Businesses or other for-profit organizations, state or local governments, and non-profit institutions.

*Estimated Number of Responses:* 4,104,771.

*Estimated Time Per Response:* 24 min.

*Estimated Total Annual Burden Hours:* 1,682,957.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 4, 2013.

**Yvette Lawrence,**

*OMB Reports Clearance Officer.*

[FR Doc. 2013–22531 Filed 9–16–13; 8:45 am]

**BILLING CODE 4830–01–P**

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning treatment of shareholders of certain passive foreign investment companies.

**DATES:** Written comments should be received on or before November 18, 2013 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Yvette Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for copies of the regulations should be directed to Katherine Dean at Internal Revenue Service, room 6242, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Katherine.b.dean@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Treatment of Shareholders of Certain Passive Foreign Investment Companies.

*OMB Number:* 1545–1304.

*Regulation Project Number:* INTL–941–86; INTL–656–87; and INTL–704–87.

*Abstract:* This regulation concerns the taxation of shareholders of certain passive foreign investment companies (PFICs) upon payment of distributions by such companies or upon disposition of the stock of such companies. The reporting requirements affect U.S. persons that are direct and indirect shareholders of PFICs. The information is required by the IRS to identify PFICs and their shareholders, administer shareholder elections, verify amounts reported, and track transfers of stock of certain PFICs.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals and business or other for-profit organizations.

*Estimated Number of Respondents:* 2,500.

*Estimated Time per Respondent:* 1 hour.

*Estimated Total Annual Burden Hours:* 2,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection

techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 12, 2013.

**Yvette Lawrence,**

*OMB Reports Clearance Officer.*

[FR Doc. 2013–22533 Filed 9–16–13; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### United States Mint

### Citizens Coinage Advisory Committee Meeting

**ACTION:** Notification of Citizens Coinage Advisory Committee September 18, 2013, public meeting.

**SUMMARY:** Pursuant to United States Code, Title 31, section 5135(b)(8)(C), the United States Mint announces the Citizens Coinage Advisory Committee (CCAC) public meeting scheduled for September 18, 2013.

*Date:* September 18, 2013.

*Time:* 2:00 p.m. to 4:00 p.m.

*Location:* This meeting will occur via teleconference. Interested members of the public may attend the meeting at the United States Mint; 801 9th Street NW.; Washington, DC; Conference Room A.

*Subject:* Review and consideration of themes for the reverse of the 2015 and 2016 Native American $1 Coin, and review and discussion of themes for the Congressional Gold Medal to the First Special Service Force, collectively, in recognition of their dedicated service during World War II.

Interested persons should call the CCAC HOTLINE at (202) 354–7502 for the latest update on meeting time and room location.

In accordance with 31 U.S.C. 5135, the CCAC:

- Advises the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals.
- Advises the Secretary of the Treasury with regard to the events, persons, or places to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made.
- Makes recommendations with respect to the mintage level for any commemorative coin recommended.

**FOR FURTHER INFORMATION CONTACT:** William Norton, United States Mint Liaison to the CCAC; 801 9th Street NW.; Washington, DC 20220; or call 202–354–7200.

Any member of the public interested in submitting matters for the CCAC's consideration is invited to submit them by fax to the following number: 202–756–6525.

**Authority:** 31 U.S.C. 5135(b)(8)(C).

Dated: September 9, 2013.

**Richard A. Peterson,**

*Deputy Director, United States Mint.*

[FR Doc. 2013–22527 Filed 9–16–13; 8:45 am]

BILLING CODE P

# FEDERAL REGISTER

Vol. 78 Tuesday,

No. 180 September 17, 2013


Part II

## The President

Presidential Determination No. 2013–13 of September 12, 2013—Continuation of the Exercise of Certain Authorities Under the Trading With the Enemy Act

Federal Register
Vol. 78, No. 180
Tuesday, September 17, 2013

# Presidential Documents

**Title 3—**

## The President

**Presidential Determination No. 2013–13 of September 12, 2013**

## Continuation of the Exercise of Certain Authorities Under the Trading With the Enemy Act

**Memorandum for the Secretary of State [*and*] the Secretary of the Treasury**

Under section 101(b) of Public Law 95–223 (91 Stat. 1625; 50 U.S.C. App. 5(b) note) and a previous determination on September 10, 2012 (77 *FR* 56753, September 13, 2012), the exercise of certain authorities under the Trading With the Enemy Act is scheduled to terminate on September 14, 2013.

I hereby determine that the continuation for 1 year of the exercise of those authorities with respect to Cuba is in the national interest of the United States.

Therefore, consistent with the authority vested in me by section 101(b) of Public Law 95–223, I continue for 1 year, until September 14, 2014, the exercise of those authorities with respect to Cuba, as implemented by the Cuban Assets Control Regulations, 31 CFR Part 515.

The Secretary of the Treasury is authorized and directed to publish this determination in the *Federal Register.*

THE WHITE HOUSE,
*Washington, September 12, 2013.*

[FR Doc. 2013–22758
Filed 9–16–13; 11:15 am]
Billing code 4811–33–P

# Reader Aids

**Federal Register**

Vol. 78, No. 180

Tuesday, September 17, 2013

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| | |
|---|---|
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| **Laws** | **741–6000** |
| **Presidential Documents** | |
| Executive orders and proclamations | **741–6000** |
| **The United States Government Manual** | **741–6000** |
| **Other Services** | |
| Electronic and on-line services (voice) | **741–6020** |
| Privacy Act Compilation | **741–6064** |
| Public Laws Update Service (numbers, dates, etc.) | **741–6043** |
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## FEDERAL REGISTER PAGES AND DATE, SEPTEMBER

54147–54372 ..... 3
54373–54560 ..... 4
54561–54734 ..... 5
54735–54958 ..... 6
54959–55168 ..... 9
55169–55628 ..... 10
55629–56126 ..... 11
56127–56582 ..... 12
56583–56810 ..... 13
56811–57032 ..... 16
57033–57226 ..... 17

## CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

**3 CFR**

**Administrative Orders:**
Notices:
Notice of September 10, 2013 ..... 56581
Presidential Determinations:
No. 2013–8 of April 11, 2013 ..... 55169
No. 2013–13 of September 12, 2013 ..... 57225

**Proclamations:**
9005 ..... 54735
9006 ..... 54737
9007 ..... 54739
9008 ..... 54741
9009 ..... 54743
9010 ..... 54745
9011 ..... 54747
9012 ..... 54749
9013 ..... 56123
9014 ..... 56125
9015 ..... 56809

**5 CFR**

1201 ..... 56811
1209 ..... 56811
Ch. LXXXII ..... 55171
7501 ..... 56127

**Proposed Rules:**
300 ..... 54434
315 ..... 54434
335 ..... 54434
410 ..... 54434
537 ..... 54434
900 ..... 54434

**6 CFR**

**Proposed Rules:**
5 ..... 55657

**7 CFR**

27 ..... 54970
42 ..... 57033
205 ..... 56811
318 ..... 56129
457 ..... 55171
955 ..... 56816
987 ..... 54147
1222 ..... 56817

**Proposed Rules:**
915 ..... 57099
984 ..... 57101
1222 ..... 57006

**10 CFR**

170 ..... 54959
712 ..... 56132
1046 ..... 55174

**Proposed Rules:**
32 ..... 56839
50 ..... 56174
51 ..... 54789, 56621, 56776
52 ..... 56174
431 ..... 54197, 55782, 55890

**12 CFR**

303 ..... 55340
308 ..... 55340
324 ..... 55340
327 ..... 55340
330 ..... 56583
333 ..... 55340
337 ..... 55340
347 ..... 55340
349 ..... 55340
360 ..... 54373, 55340
362 ..... 55340
363 ..... 55340
364 ..... 55340
365 ..... 55340
390 ..... 55340
391 ..... 55340

**Proposed Rules:**
336 ..... 54401
344 ..... 54403
390 ..... 54401, 54403

**14 CFR**

16 ..... 56135
23 ..... 55629
39 ..... 54149, 54152, 54377, 54380, 54383, 54385, 54387, 54561, 54751, 56148, 56150, 56589, 56592, 56594, 56597, 56599, 56601, 57047, 57049, 57053
61 ..... 56822
71 ..... 54561
97 ..... 54562, 54564, 56829, 56830

**Proposed Rules:**
1 ..... 54790
21 ..... 54791
23 ..... 54790
25 ..... 54790
27 ..... 54790
29 ..... 54790
39 ..... 54594, 54596, 54792, 54794, 55660, 55662, 56182, 56622, 57104
61 ..... 54790
71 ..... 54412, 54413, 54415, 54795
91 ..... 54790
121 ..... 54790
125 ..... 54790
135 ..... 54790

**15 CFR**

748 ..... 54752

**Proposed Rules:**
730 ..... 55664
740 ..... 55664

744 ....55664
756 ....55664
758 ....55664
762 ....55664

**16 CFR**

305 ....54566
**Proposed Rules:**
312 ....56183

**17 CFR**

**Proposed Rules:**
Ch. 1 ....56542

**19 CFR**

12 ....56832
101 ....54755

**20 CFR**

404 ....54756

**21 CFR**

1 ....54568
73 ....54758
520 ....57057
**Proposed Rules:**
73 ....57105
1140 ....55671

**24 CFR**

5 ....57058
202 ....57058
**Proposed Rules:**
214 ....56625
Ch. IX ....54416

**26 CFR**

1 ....54156, 54391, 54568, 54758, 55202
48 ....54758
602 ....54156
**Proposed Rules:**
1 ....54598, 54796, 54971, 54986, 56841, 56842
301 ....54986, 54996

**27 CFR**

**Proposed Rules:**
479 ....55014

**28 CFR**

**Proposed Rules:**
16 ....56852

**29 CFR**

1601 ....54762
4022 ....56603
4044 ....56603
**Proposed Rules:**
1910 ....56274
1915 ....56274
1926 ....56274

**30 CFR**

938 ....55210
**Proposed Rules:**
250 ....54417

**31 CFR**

34 ....54801
**Proposed Rules:**
538 ....54199
560 ....54199

**33 CFR**

100 ....54168, 54569, 54571, 55214, 57061, 57063
117 ....55214, 55215, 56605, 56607, 56609, 56610
165 ....54171, 54392, 54574, 54576, 54578, 54581, 54583, 54585, 54587, 54588, 55216, 55219, 56151, 56611, 56833, 56834
**Proposed Rules:**
64 ....55230
140 ....55230
141 ....55230
142 ....55230
143 ....55230
144 ....55230
145 ....55230
146 ....55230
147 ....55230
165 ....54599

**34 CFR**

Subtitle A ....54588
75 ....57066
371 ....57066

**36 CFR**

220 ....56153

**38 CFR**

3 ....54763
17 ....57067
**Proposed Rules:**
17 ....55671

**40 CFR**

9 ....55632
52 ....54173, 54177, 54394, 54396, 54960, 54962, 55221, 55225, 56164, 56168, 57073
60 ....54766
62 ....54766
81 ....54396, 56168
180 ....55635, 55641, 55644
271 ....54178
300 ....56611
721 ....55632
1037 ....56171
1039 ....56171
1042 ....56171
1068 ....56171
**Proposed Rules:**
52 ....54200, 54602, 54813, 54816, 54828, 54831, 55029, 55037, 55234, 56185, 56633, 56639
60 ....54606
63 ....54606
81 ....54831
98 ....55994
131 ....54518
152 ....54841
180 ....56185
271 ....54200

**42 CFR**

**Proposed Rules:**
84 ....54432
405 ....54842
410 ....54842
412 ....54842
416 ....54842
419 ....54842
475 ....54842
476 ....54842
486 ....54842
495 ....54842

**44 CFR**

64 ....54766, 54770

**46 CFR**

2 ....56612
24 ....56612
30 ....56612, 56837
70 ....56612
90 ....56612
91 ....56612
98 ....54775
150 ....56837
153 ....56837
188 ....56612

**47 CFR**

1 ....55648
20 ....55648
22 ....55648
24 ....55648
27 ....55648
54 ....54967
73 ....56170
90 ....55648
**Proposed Rules:**
54 ....56188
64 ....54201
79 ....54612

**48 CFR**

201 ....54968
206 ....54968

**49 CFR**

385 ....56618
535 ....56171
571 ....55138
593 ....54182
1121 ....54589
1150 ....54589
1180 ....54589
**Proposed Rules:**
173 ....54849
174 ....54849
178 ....54849
179 ....54849
180 ....54849
396 ....54861
571 ....54209

**50 CFR**

17 ....55221, 55600, 55649, 56026, 56072, 57076
622 ....56171
635 ....54195
648 ....54194, 54399
660 ....54548
679 ....54591, 54592, 55228, 56837, 57097
**Proposed Rules:**
17 ....54214, 54218, 54221, 54613, 54614, 55046, 56192, 56506
402 ....54437
648 ....54442
660 ....56641
679 ....57106

## LIST OF PUBLIC LAWS

**Note:** No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**

**Last List August 13, 2013**

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